

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

13-CR-607 (JFB)

-against- :

United States Courthouse
Central Islip, New York

PHILLIP A. KENNER,
a/k/a "Philip Kenner"
and

TOMMY C. CONSTANTINE,
a/k/a "Tommy C. Hormovitis,

TRANSCRIPT OF TRIAL

Defendants. : May 5, 2015
9:50 a.m.

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BEFORE THE HONORABLE JOSEPH F. BIANCO
UNITED STATES DISTRICT JUDGE, and a jury

APPEARANCES:

For the Government:

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United States Attorney
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Central Islip, New York 11722
BY: JAMES M. MISKIEWICZ
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For the Defendant:
Kenner:

BY: RICHARD HALEY, ESQ.
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For the Defendant
Constantine:

BY: ROBERT LARUSSO, ESQ.
ANDREW OLIVERAS, ESQ.
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Court Reporter:

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Proceedings recorded by mechanical stenography.
Transcript produced by computer.

1 (Trial resumes.)

2 (Appearances stated for the record.)

3 THE COURT: Good morning. All right. We're
4 still waiting for two jurors. That's not good, it's 10 to
5 10. But we did have an issue with one alternate juror.
6 Alternate juror number one indicated to my deputy that I
7 guess she contacted her employer and her employer told her
8 she's only getting paid for two weeks and that would be a
9 financial hardship on her. She also indicated that she
10 has MS and apparently from all the sitting yesterday she
11 said her legs were killing her. So obviously -- I would
12 consider it a hardship during the jury selection. I don't
13 know why she didn't tell me that earlier during the jury
14 selection. I'm thinking of bringing her out.

15 MR. HALEY: Your Honor, the stenographer has
16 been kind enough to provide daily copy which I received.
17 I would ask for daily copy approval by the court.

18 THE COURT: Yes. That's granted.

19 MR. HALEY: Thank you, sir.

20 THE COURT: Okay, let's bring alternate juror
21 number one out.

22 (Alternate juror number one enters the
23 courtroom.)

24 THE COURT: Good morning, ma'am. You can have a
25 seat. Good morning.

1 ALTERNATE JUROR NO. 1: Good morning.

2 THE COURT: Michele told me that there's some
3 issues you wanted to discuss with me.

4 ALTERNATE JUROR NO. 1: Yes. My job only pays
5 me two weeks for the jury and after that it's a burden to
6 me. I also have MS. My legs killed me yesterday sitting
7 here.

8 THE COURT: On the second issue, it doesn't
9 matter to me if jurors stand in the courtroom. You can
10 stand at any time. That would solve that issue, right.

11 ALTERNATE JUROR NO. 1: Yes.

12 THE COURT: On the former issue, my question is
13 why didn't you raise that earlier? Did they tell you
14 something different or you didn't ask?

15 ALTERNATE JUROR NO. 1: I didn't ask.

16 THE COURT: What type of business do you work
17 for? A big business.

18 ALTERNATE JUROR NO. 1: I work for South Oaks
19 hospital in Amityville.

20 THE COURT: And you indicated that it would be a
21 financial hardship. Can you explain to me why. I
22 understand you're making less money, but explain to me.

23 ALTERNATE JUROR NO. 1: I'm divorced, children.
24 If there's a problem, I can sit.

25 THE COURT: Let me speak to the lawyers. I'll

1 let you know. Thank you.

2 ALTERNATE JUROR NO. 1: Okay, thank you.

3 (Alternate juror No. 1 retires from the
4 courtroom.)

5 THE COURT: What does everyone think.

6 MR. MISKIEWICZ: The government has no objection
7 to releasing her, your Honor.

8 MR. HALEY: Objection.

9 MR. LA RUSSO: Your Honor, I would have no
10 objection. If the court has any thoughts about possibly
11 calling the facility to see if they would allow her or
12 extend her that privilege, I thought South Oaks was a
13 public facility. I might not be sure about that. But
14 again, if the Court wishes, I have no objection to
15 excusing her. It's just that this is going to be a long
16 trial. I know we have six alternates. I just express a
17 little bit of concern. If the Court wishes, I have no
18 objection.

19 THE COURT: I'm going to have Michele -- I may
20 have my law clerk call in the first instance at South Oaks
21 to see if they can make an exception. I have known
22 situations where they can do that. Is there any objection
23 to doing that?

24 MR. HALEY: Your Honor, obviously I defer to the
25 Court's decision. My only thought is she did express she

1 would be physically uncomfortable at times. Your Honor
2 was very sensitive to that by saying stand up. I don't
3 think anyone being distracted due to the physical
4 discomfort -- I defer to the Court's decision.

5 THE COURT: Mr. La Russo, my inclination is to
6 let her go. If you want me to call her out, I will.

7 MR. LA RUSSO: No. Not at all.

8 THE COURT: We have five other alternates. I do
9 have concern to see someone go and other people saying I
10 want to reconsider, too. But we'll deal with that and
11 everything should be okay. Why don't we bring her out.

12 (Alternate juror No. 1 enters the courtroom.)

13 THE COURT: I'm going to excuse you from
14 service. It sounds like a financial hardship to me. It
15 would be better if I knew before, but I understand you're
16 not familiar with the practices of the court. So you're
17 excused from service. Thank you. Don't discuss obviously
18 anything with anyone as you are going out.

19 ALTERNATE JUROR NO. 1: I won't. Thank you.

20 (Alternate juror No. 1 leaves the courtroom.)

21 THE COURT: Are there any issues before we bring
22 the jury out?

23 MR. MISKIEWICZ: Nothing from the government.

24 MR. LA RUSSO: Nothing at this time.

25 MR. HALEY: No, sir.

1 THE COURT: Okay.

2 MR. MISKIEWICZ: Your Honor, should we have the
3 witness on the stand?

4 THE COURT: Yes.

5 (Witness enters the courtroom.)

6 THE COURT: How much more do you have,
7 Mr. Miskiewicz?

8 MR. MISKIEWICZ: Probably 20 more minutes.

9 MR. HALEY: Your Honor, only because of the
10 sheer volume of material in this case, can I implore the
11 Court to have the courtroom secretary make a copy of these
12 documents?

13 THE COURT: Sure.

14 MR. HALEY: Thank you, sir.

15 THE COURT: Just hand them to Michele when she
16 comes out.

17 THE CLERK: All rise.

18 (Whereupon, the jury entered the courtroom.)

19 THE COURT: If everyone can be seated. Good
20 morning, members of the jury.

21 THE JURY: Good morning.

22 THE COURT: It's good to see you all again.
23 This morning there's just two things before we get
24 started. The first thing I just want to emphasize again
25 to try to get here so we can start at 9:30. We estimate

1 this is going to be a five week trial. If we start late
2 every morning, it will add up. I'm doing my best, the
3 lawyers are working with me to try to be efficient in
4 terms of the time that you are here. I meet at the end of
5 the day, we meet during the lunch break. So issues that
6 come up, legal issues that I need to resolve, I am trying
7 to do on our own time, not on your time. But I ask you to
8 try to be here on time. I know the LIE and other
9 transportation issues develop. But try to budget extra
10 time.

11 The other thing is as you see, I had to excuse
12 alternate number one had a hardship that included a
13 medical hardship that required me to excuse here. I'm
14 going to ask that the five alternates shift down a seat.
15 All right. We'll now continue with the trial.

16 As you'll recall, Mr. Juneau was on direct
17 examination. We'll continue from that point.

18 I remind you, sir, that you are still under
19 oath. Do you understand?

20 THE WITNESS: Yes.

21 THE COURT: Go ahead, Mr. Miskiewicz.

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Juneau - Direct/Miskiewicz

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1 **JOE JUNEAU,**

2 called as a witness, having been previously
3 duly sworn, was examined and testified further
4 as follows:

5 MR. MISKIEWICZ: Thank you, your Honor.

6

7 DIRECT EXAMINATION (Continued.)

8 BY MR. MISKIEWICZ:

9 Q. Mr. Juneau, yesterday you testified a little bit
10 about another investment in Air Park in Scottsdale. Do
11 you recall?

12 A. Yes.

13 Q. And did there ever come a time that you saw any
14 profit or return of your money in that Air Park?

15 A. Well, yeah, at one point with the Air Park after
16 the -- we filed a case against individuals and turned out
17 to making a deal to get out of the Air Park then.

18 Q. And when you say you filed a case, who were you
19 suing?

20 A. The two defendants were part of it, but there were a
21 list of other people and companies.

22 Q. Okay. When you say the two defendants, you mean
23 Mr. Kenner and Mr. Constantine?

24 A. Yes.

25 Q. Did you and Mr. Constantine at some point reach some

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1 sort of settlement?

2 A. Yes.

3 Q. Now, again, how much money did you invest in
4 Mr. Constantine's Air Park?

5 A. Half a million.

6 Q. And what were you trying do when you say get out of
7 it? Were you trying to get your half a million back or a
8 profit back?

9 A. Yeah, what I wanted I had asked Phil Kenner was to
10 get my money back out of the different deals and to get it
11 invested the way it was invested earlier in my hockey
12 career.

13 Q. So you got your half a million back?

14 A. I ended up making a deal and the deal was getting an
15 airplane.

16 Q. An airplane?

17 A. Yeah.

18 Q. Why did you get an airplane not your money back?

19 A. Well, I personally felt it was the only way to get
20 something out of it, to be honest. And you know, not that
21 I needed an airplane, but I'm a pilot, I'm an airline
22 co-engineer and I figured that's better than nothing.

23 Q. Did you have any idea what the value of this airplane
24 was when you got it back, in other words, it was a million
25 dollar aircraft?

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1 A. Well, it was appraised and there were some numbers
2 threw at us, and you know, in a good market, I guess it
3 was close to the value of my investment in the Air Park.
4 But at the time it was more around 350, 350,000 for it.

5 Q. So you put in \$500,000 in approximately 2003, is that
6 accurate?

7 A. Yeah, around that time.

8 Q. And when did you settle for this airplane that was
9 worth approximately 300 something thousand?

10 A. I think that it was, that case was in 2007.

11 Q. Okay. And was there ever any explanation from
12 Mr. Constantine for what happened to your money?

13 A. No.

14 Q. What did they use the money for?

15 A. I don't believe we ever discussed that, again my main
16 objective was to get the money back out of it, and never
17 really got any explanations about what was going on with
18 about the whole thing.

19 Q. And Mr. Juneau, about the hundred thousand dollar
20 loan that you testified about yesterday, did you ever get
21 any of that money back?

22 A. The \$100,000?

23 Q. Let me -- I'll withdraw the question. I'll rephrase
24 it.

25 You testified yesterday about some e-mails that

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1 you sent to Mr. Kenner, it was \$100,000 that you indicated
2 in your e-mail was a loan?

3 A. Yeah. For Hawaii.

4 Q. For Hawaii?

5 A. Yeah.

6 Q. Did you get that back?

7 A. Well, how can I say that, I never received a check or
8 anything like that. At some point in that's the same loan
9 that was threw at me at the time, I discovered that it was
10 not a loan for 100,000, it was a loan for half a million.
11 And I kind of found that out in the letter that I received
12 from Northern Trust later on.

13 Q. Did you eventually close or insist on the closing of
14 your line of credit with morning entrust?

15 A. Yeah, when I received that letter I did write
16 personally to someone at the Northern Trust to inquire
17 about this because I really didn't know what this was
18 about, and I also wrote to Phil Kenner asking what was
19 this about, and in the next few days the line of credit
20 got repaid and my, I believe that the explanations from
21 Northern Trust that was -- I had two of my three accounts
22 there that were pledged, and if it got three up, and then
23 following that I got my money out of there, remaining of
24 it.

25 Q. You said you never got a check or you never got cash

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1 back from your hundred thousand dollar investment in
2 Hawaii. I show you what I'm marking for identification as
3 Government's Exhibit JJ-1. (Handing.)

4 Showing you JJ-1. Does that in any way -- do
5 you remember getting any money from a company by the name
6 of Eufora?

7 A. Yes. I do. Yeah.

8 Q. And does that, do you recall getting a check from
9 Eufora for \$100,000?

10 A. I believe so, yeah.

11 Q. Okay. And as for the Hawaii investment whether it
12 was a hundred thousand or \$500,000, do you recall getting
13 any money back?

14 A. No. Again, I never got any money from an Hawaii
15 company, you know, if you can say that getting --

16 Q. I don't want to go beyond that. My question is did
17 you get any money back from your Hawaii investment?

18 A. Well, I guess not. I mean --

19 Q. All right.

20 A. I --

21 Q. Whenever you say --

22 A. I never received any checks or anything like that,
23 that's how it was.

24 MR. MISKIEWICZ: May I just have a moment,
25 your Honor?

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1 Q. You said regarding the Air Park that you took this
2 airplane which was worth you testified was less than
3 \$500,000, why -- were you offered cash instead? --

4 A. I was never offered cash but I remember the first
5 discussion we had.

6 Q. You had with who?

7 A. With Mr. Constantine.

8 Q. What did Mr. Constantine tell you?

9 A. That he was interested into making an arrangement,
10 making a deal for that Air Park investment.

11 Q. And you mean when you say an arrangement, you mean to
12 get you out of the --

13 A. Well, yeah, I mean that was my request, to get my
14 money out.

15 Q. And at first did he offer you case, did he say that
16 he would pay you cash?

17 A. I can't say that. I can't remember exactly. But I
18 know that it seemed to me after hanging up that there was
19 a possibility to get some of my money back of it.

20 Q. And then the only money you got out of it was an
21 airplane?

22 A. Well, yeah, the airplane was what I got out of the
23 Air Park deal.

24 Q. Okay. Thank you.

25 MR. MISKIEWICZ: No further questions.

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1 THE COURT: Thank you. Cross-examination. Did
2 you discuss who was going to go first?

3 MR. HALEY: I believe that I was going first,
4 Judge, thank you.

5 THE COURT: Would the lawyers approach?

6 (Continued on next page.)
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Juneau - Direct/Miskiewicz

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1 (Whereupon, the following occurred at sidebar.)

2 THE COURT: I don't know if I made an error
3 yesterday, I didn't have 2152 coming into evidence. Did
4 it?

5 MR. HALEY: It did not. I'm going to be
6 offering it. It did not. You're right.

7 MR. LA RUSSO: Judge, housekeeping,
8 Mr. Miskiewicz and I had a discussion about whether or not
9 a portion of my cross is going to be relevant. So when
10 Mr. Haley finishes, can we just excuse the jury and have
11 it? It's a pretty substantial question from my point of
12 view.

13 THE COURT: All right.

14 (Continued on next page.)
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Juneau - Cross/Haley

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1 (Whereupon, the following occurred in open
2 court.)

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4 CROSS-EXAMINATION

5 BY MR. HALEY:

6 Q. Mr. Juneau, good morning, sir.

7 A. Good morning.

8 Q. Mr. Juneau, though you did not have a degree in
9 finance, you did graduate with a degree in aeronautical
10 engineering, correct?

11 A. Yes.

12 Q. And I take it that the program that you were involved
13 in, the educational program was rigorous, you had to
14 review I can only imagine a lot of technical material, was
15 that correct?

16 A. Yeah. It was pretty tough at points.

17 Q. And to your credit you were able to absorb the
18 material you read and obtain your degree; is that correct?

19 A. Yeah. Somehow I got through, yeah.

20 Q. Now, the government showed you a standard advisory
21 agreement yesterday and that was the agreement that you
22 had with Phil Kenner with respect to his role as your
23 business manager, do you recall that document?

24 A. Well, I seen it. Again, I don't, it's pretty vague,
25 but I remember over the years seeing documents linking

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1 Mr. Kenner and I through his advising work.

2 Q. Sir, I'm going to show you the document introduced
3 into evidence as Government's Exhibit 6016, and just take
4 a look at it, it's not that lengthy, 3, 4 pages.

5 (Handing.)

6 A. Yeah.

7 Q. Is it your testimony that the content of that
8 document is pretty vague?

9 A. Well, I don't remember when it was presented to me
10 exactly. I don't remember the date that I seen this. I'm
11 not saying that I never seen it. I'm just saying --

12 Q. I understand that, sir. But as you read the document
13 itself.

14 A. Yeah.

15 Q. And you look at the words on those pages, is it your
16 testimony that the words on those pages are vague? That's
17 my question.

18 MR. MISKIEWICZ: Objection, relevance.

19 THE COURT: No. That's okay. Overruled.

20 A. Yeah, I'm not saying that the wording is vague.
21 That's not what I'm saying. I'm just saying that my
22 memory of this, of seeing this document is vague. That's
23 it.

24 Q. We can agree, sir, as relates to the document itself,
25 there's a clause that says arbitration, second to last

Juneau - Cross/Haley

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1 page. Would you take a look at it.

2 MR. HALEY: If I may approach, Judge?

3 THE COURT: You don't have to ask to approach.

4 MR. HALEY: Thank you, sir.

5 Q. Actually, sir, page 4 of the document, just the
6 paragraph, arbitration.

7 A. Yeah.

8 Q. It's only two paragraphs. Could you simply read that
9 to yourself while you're on the stand. To yourself.

10 (Pause.)

11 A. Okay.

12 Q. Sir, can we agree that the import of that paragraph
13 is that should there be a dispute with between yourself
14 and Philip Kenner reference to your financial affairs,
15 you're entitled to take that dispute to arbitration, isn't
16 that the import of that paragraph?

17 A. That's what it looks like. I'm not a professional,
18 if making sense of this stuff, but that's what it looks
19 like, yeah.

20 Q. That's what the words say, correct, sir?

21 A. Yeah.

22 Q. All right. Other than the lawsuit you referred to a
23 moment ago, where you commenced a suit to obtain the
24 return of your investment or contribution, however you
25 want to characterize it not Avalon Air Park, other than

Juneau - Cross/Haley

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1 that lawsuit, did you ever bring a lawsuit by way of that
2 arbitration provision in court with respect to any of the
3 disputes you are claiming you had with Phil Kenner as
4 relates to the management of your business affairs by him?

5 MR. MISKIEWICZ: Objection, relevance.

6 THE COURT: Overruled.

7 A. The only lawsuit I think that you know that I
8 remember is the one that I referred to earlier.

9 Q. And we can agree, sir, that as relates to the line of
10 credit, and dispute that you had where Phil about
11 conservative versus speculative investments, in the final
12 analysis, your line of credit was replenished, it was
13 closed, and you did not lose any of your collateral.
14 Isn't that true?

15 A. Well, that was the outcome, yeah. Yeah.

16 Q. And we know the outcome with reference to at least
17 \$100,000 where it went, why it went, where it went,
18 there's no question at some point as you told us a moment
19 ago you received a check for \$100,000, is that true?

20 MR. MISKIEWICZ: Objection, form.

21 THE COURT: Yes. Sustained as to form.

22 Q. I know you testified to it, sir, but we can agree
23 that you did receive a check for \$100,000, I know it was
24 drawn on the Eufora account, but that indeed did occur,
25 correct?

Juneau - Cross/Haley

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1 A. I did receive the check from Eufora.

2 Q. Now, who is Jean Turpin?

3 A. He's a good friend of mine.

4 Q. And has he ever served as an investment advisor to
5 you?

6 A. Yes, he did.

7 Q. For how long?

8 A. I believe it was, I got introduced to Jean in 1993,
9 around that time.

10 Q. And did he ever recommend an investment to you where
11 you lost money?

12 MR. MISKIEWICZ: Objection.

13 THE COURT: Why don't you approach.

14 (Continued on next page.)

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Juneau - Cross/Haley

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1 (Whereupon, the following occurred at sidebar.)

2 THE COURT: Is the objection relevance?

3 MR. MISKIEWICZ: The objection is relevance,
4 403. Also beyond the scope of the direct.

5 THE COURT: What's the relevance.

6 MR. HALEY: There's been an underlying theme,
7 I've looked at the prosecution's case, that the client is
8 making recommendations with respect to risky investments
9 and somehow when those investments don't work out, that's
10 some indication of criminal conduct or inappropriate
11 conduct. As an offer of proof we know that Jean Turpin
12 represented that he invested in a Bahamian bank and based
13 upon prior testimony in the proceeding he indicated that
14 he did not receive a full return on that investment.

15 The point simply being, Judge, that these
16 investments he understood the risks, there's a situation
17 where he had another financial advisor, he followed his
18 advice, that investment didn't work out.

19 The jury ought to know, Judge, that there's
20 other instances where investment advisors can make advice,
21 the client loses money and that's not criminal conduct.

22 THE COURT: I think that it's marginally
23 relevant. I'll allow it.

24 MR. MISKIEWICZ: Under 403, we are not here to
25 suggest that they lost money on a risky deal and

Juneau - Cross/Haley

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1 complaining.

2 THE COURT: This is very -- you went to this for
3 an hour. The fact he invested money on other occasions
4 establishes his mindset, so I'm going to allow it. Okay.

5 MR. HALEY: It will be two questions. Thank
6 you.

7 (Continued on next page.)

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Juneau - Cross/Haley

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1 (Whereupon, the following occurred in open
2 court.)

3 BY MR. HALEY:

4 Q. So sir, my question is this, did Mr. Turpin recommend
5 that you invest in a Bahamian bank at some point in time?

6 A. Yeah, I guess it was, it was something that was
7 discussed, something that was also discussed with Phil
8 Kenner and something that we decided to do.

9 Q. When you say we decided do, Mr. Turpin's investment,
10 correct?

11 MR. MISKIEWICZ: Objection.

12 THE COURT: Overruled. You can answer it.

13 A. Yeah. Jean was involved in opening bank accounts. I
14 have bank accounts under his management.

15 Q. And as a result of his involvement in that
16 recommended investment in the Bahamian bank, did you lose
17 money in that investment, yes or no?

18 MR. MISKIEWICZ: Objection.

19 THE COURT: Overruled.

20 A. In, yeah, in some investments, yeah, I remember,
21 yeah, some of my different stocks I don't know if there
22 was one or two or whatever that did not make gains, yeah.

23 Q. Based on Mr. Turpin's recommendation, correct, sir?

24 A. Well, I don't know if you can call this
25 recommendations, I mean I did hire the services of Jean

Juneau - Cross/Haley

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1 Turpin, so I did hire his services as a financial advisor.
2 So I don't follow every investment that he does to
3 day-by-day.

4 Q. Final question on that, sir. Do you fault him,
5 Mr. Turpin for making that investment to you?

6 MR. MISKIEWICZ: Objection.

7 THE COURT: Sustained. I'm going to sustain it.

8 A. I can't --

9 THE COURT: No. When I sustain it, it means you
10 don't have to answer.

11 THE WITNESS: Okay.

12 Q. Now, yesterday you identified as an exhibit an e-mail
13 between yourself and Philip Kenner where Phil Kenner used
14 expletives, used vulgar language; is that correct?

15 A. With reference to?

16 Q. Well, do you recall an e-mail he said something about
17 I'm paraphrasing tired of this shit or words to that
18 effect.

19 Do you remember that e-mail?

20 A. Yeah.

21 Q. The content of that e-mail, it sounded like he was
22 angry, Phil Kenner?

23 A. I was very surprised at the tone when I received that
24 e-mail, yeah.

25 Q. But the expletives that he used, you heard those

Juneau - Cross/Haley

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1 expletives before, correct, in your hockey career?

2 A. Those expletives?

3 Q. I'm sorry, sir. I apologize.

4 The word shit was used in that e-mail, correct,
5 S-H-I-T?

6 A. I saw that, yeah.

7 Q. And the word begins with an F, letters following it,
8 was used in that e-mail, right?

9 A. Yeah.

10 Q. As a professional hockey player, that's not the first
11 time that you ever heard those words, right?

12 A. Of course not.

13 Q. Okay.

14 You were questioned yesterday by the government
15 and asked to recollect e-mails, events, conversations with
16 Phil Kenner that go back at least 12 years, correct, to
17 2003?

18 A. At least, yeah. I guess.

19 Q. And you were trying to do your best, sir, to bring up
20 your recollection as to those events I'm sure, is that
21 true?

22 A. Again, the collections of these e-mails, it's some
23 stuff that I -- that I found through e-mails that I had or
24 I had kept which I had sent when I, when we opened the
25 case back in 2007.

Juneau - Cross/Haley

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1 So that was a bunch of e-mails sent to the
2 lawyer that I had hired.

3 Q. Mr. Meeks?

4 A. Yes.

5 Q. And that was also the e-mails that were most recently
6 forwarded to you by the FBI?

7 A. It looks like it, yeah.

8 Q. Sir, would you kindly take a look at a document
9 marked Kenner Exhibit 4. (Handing.)

10 And take your time. (Pause.)

11 MR. MISKIEWICZ: Your Honor, may we approach?

12 THE COURT: Yes.

13 (Continued on next page.)

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Juneau - Cross/Haley

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1 (Whereupon, the following occurred at sidebar.)

2 MR. MISKIEWICZ: My objection is hearsay. It's
3 irrelevant.

4 (Document handed to the Court.)

5 MR. HALEY: Your Honor, as an offer of proof,
6 well, first of all, I haven't been able to even ask the
7 witness if he can identify the document. But assuming
8 that he can identify the document, I authenticate this as
9 a document that was a communication between himself and
10 Phil Kenner that was testified to in the government's
11 direct case, I would suggest the relevance of this
12 document, Judge, is this is the e-mail which followed the
13 exhibit 729 that was introduced into evidence and it
14 completes the sequence.

15 THE COURT: I got it. I'm going to overrule the
16 objection. This helps establish the nature of their
17 communications or relationship at the time. It completes
18 the picture of the conversation that they had during that
19 time period.

20 So I'll allow it.

21 MR. HALEY: Thank you, sir.

22 (Continued on next page.)
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Juneau - Cross/Haley

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1 (Whereupon, the following occurred in open
2 court.)

3 BY MR. HALEY:

4 Q. Take your time if you want. Do you recognize that
5 document, sir?

6 A. I think that I do remember this e-mail exchange.

7 Q. And it's an e-mail exchange between you, sir?

8 A. Phil Kenner and I.

9 Q. And with reference to the e-mails that were
10 introduced into evidence yesterday, that's part of the
11 sequence, is it not, sir?

12 A. Well, it's, it's very similar. I don't recall the
13 dates of the other e-mails from yesterday.

14 Q. I can show you the exhibits, sir. I'll show you
15 specifically exhibit 729.

16 Take a look at exhibit 729 and read that to
17 yourself. (Hanging.)

18 A. It comes after the others.

19 Q. It comes after 729, correct?

20 A. From the dates, yeah.

21 MR. HALEY: Judge, I'd offer that as Kenner
22 Exhibit 4.

23 THE COURT: Pursuant to the discussion at
24 sidebar, Kenner 4 is admitted.

25 (Defendant's Exhibit Kenner 4 in evidence.)

Juneau - Cross/Haley

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1 Q. Now, may I see --

2 THE COURT: Is that working? I was told we had
3 a problem with it this morning. Looks like it's working.

4 MR. HALEY: It is, Judge.

5 Q. Sir, I guess for purposes of the record --

6 MR. HALEY: Your Honor, may I read into the
7 record the contents of the e-mail.

8 THE COURT: Sure.

9 MR. HALEY: It essentially appears to be from
10 Phil Kenner to you, RE, what's up, long days at this end.

11 THE COURT: I don't think -- you can move the
12 document up if you want.

13 MR. HALEY: I'm sorry.

14 THE COURT: Keep going.

15 MR. HALEY: Thank you.

16 Just for purposes of the record, long days at
17 this end. I am working on the exit strategies for you
18 every day on the projects. I am getting money out before
19 you're supposed to, so take sometime to replace with other
20 investors. Be patient. I will take care of it. PK. And
21 then the response: I knew that, what else? How are you?
22 How's your family? How are the different projects going?
23 And then final response: Not much, just working 20 hours
24 a day, PK.

25 Thank you, sir.

Juneau - Cross/Haley

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1 Q. Now, you were interviewed before today on two
2 occasions, sir, were you not, by the FBI?

3 A. I don't know if we can call this an interview. I had
4 two long discussions in March, I believe, and then we met
5 when I arrived here a couple of days ago.

6 Q. Would you agree that your memory of events involving
7 your interaction with Phil Kenner was better in 2009 than
8 it is in 2015?

9 A. That's normal, yeah, obviously the closer to all
10 these events the more that I remembered from all of that
11 for sure.

12 Q. And on let's say October of 2009, in a telephone
13 interview, you told Agent Galioto at that point in time --

14 MR. MISKIEWICZ: Objection.

15 MR. HALEY: May I finish?

16 MR. MISKIEWICZ: May we approach?

17 (Continued on next page.)

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Juneau - Cross/Haley

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1 (Whereupon, the following occurred at sidebar.)

2 MR. MISKIEWICZ: Your Honor, I don't object to
3 the attempted impeachment. But this is an improper way of
4 using an agent's notes, which -- actually isn't even Agent
5 Galimoto's notes, the notes are not his notes.

6 We give over 302s and we label them as 3500
7 material which is appropriate, but if he has a question he
8 should ask the question.

9 THE COURT: He has notes from the FBI, his
10 suggests that he says something differently in a prior
11 interview is it a proper question to say didn't you
12 account on an earlier occasion why, I think that's
13 completely proper. If he said he doesn't remember then
14 you can use it to refresh his memory. I assuming he said
15 something different.

16 MR. HALEY: He did.

17 MR. MISKIEWICZ: My objection is that he hasn't
18 even gotten out what area it is that he's suggesting he's
19 going to impeach. And he's simply testifying if you will,
20 you told the FBI X, Y and Z, I mean even if this was a
21 transcript, he would have the opportunity to look at it,
22 and use it to refresh his recollection perhaps.

23 But to simply say, you're saying something
24 completely different based on somebody else's handwriting,
25 that's improper.

Juneau - Cross/Haley

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1 THE COURT: I disagree. We're having too many
2 sidebars, too. Reframe the question. You started out it
3 wasn't the form of a question. You started out saying you
4 said to the FBI. That's testifying.

5 MR. HALEY: Rephrase it.

6 THE COURT: Yes.

7 MR. HALEY: Okay.

8 MR. MISKIEWICZ: Thank you.

9 (Continued on next page.)
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Juneau - Cross/Haley

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1 (Whereupon, the following occurred in open
2 court.)

3 BY MR. HALEY:

4 Q. Sir, in 2009 when you were interviewed by FBI agents,
5 telephonically, did you tell the FBI at that point in time
6 that your investments with Phil Kenner involved impact
7 equipment, Escher, E-S-C-H-E-R, B-S-D, Mexico, Avalon,
8 Eufora and Hawaii investment via L-O-C. Did you tell the
9 FBI that?

10 A. It's possible. I can't say yes or no to this 2009,
11 it's possible.

12 Q. I'm going to have you take a look at a document
13 that's marked Kenner Exhibit 7. Take a look at the top of
14 the document. (Handing.)

15 And I'm going to refer your attention to the
16 fourth page of that document, something pointing to the
17 bottom portion of the document, and simply read that to
18 yourself. (Pause.)

19 A. Okay.

20 Q. Does that refresh your recollection, sir, whether in
21 2009 you had awareness of those investments as related to
22 your relationship with Phil Kenner?

23 A. That --

24 MR. MISKIEWICZ: Objection. Withdrawn.

25 THE COURT: Okay, you can answer.

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1 A. I don't have a -- I don't remember.

2 Q. So it doesn't refresh your recollection, sir? That's
3 my only question.

4 A. No.

5 Q. Would you kindly take a look at -- let me ask the
6 question first, sir.

7 In 2009 when you were telephonically interviewed
8 by the FBI, did you tell them that your line of credit was
9 being used for the Hawaii project.

10 A. I --

11 MR. MISKIEWICZ: Objection.

12 THE COURT: Overruled.

13 A. I don't remember, and I think that I asked someone
14 representing me possibly. It's again, I don't remember.

15 Q. Take a look at what's been marked Kenner Exhibit 7
16 and the bottom portion of the same document and just read
17 that to yourself. (Hanging.)

18 Does that refresh your recollection as to
19 whether or not you told the FBI in 2009 that the line of
20 credit was being used for the Hawaiian investment?

21 A. I don't know. Again, I don't remember for some
22 reason.

23 Q. You don't remember for some reason?

24 A. Well, I'm looking at this and if I didn't remember I
25 would know for sure.

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1 Q. Do you remember, sir, being interviewed by the FBI in
2 September of 2012?

3 A. No. Again, what I think is at each time until March,
4 that for some reason someone from the FBI was interviewing
5 someone. I was represented. For the -- yeah, for the
6 longest time I just wanted to turn the page on what had
7 happened from many years, this stuff kept me awake at
8 night, and at some point I just wanted to turn the page
9 and move on.

10 By being personally affected, seeing my parents
11 and my family being affected, obviously, and when I had
12 heard that through my former lawyer that Michael Meeks,
13 that the FBI was trying to reach me. I had asked my
14 financial advisor to represent me. So this might be why I
15 don't remember.

16 For me this was a way to again not come back,
17 not being haunted by all of this stuff again.

18 Q. The question I asked you, sir, is do you remember
19 being interviewed by the FBI in September of 2012?

20 A. Well, that was a long explanation, but no, I don't.

21 Q. It was a long time. I apologize, I withdraw the
22 comment.

23 A. What was that?

24 Q. I withdraw the comment.

25 By the way, that e-mail that you identified a

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1 moment ago, the Kenner Exhibit 4, that was not one of the
2 e-mails that was provided to you by the FBI before today
3 in preparation for your testimony, was it?

4 A. I don't think so.

5 (Continued on next page.)

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1 CONTINUED CROSS EXAMINATION

2 MR. HALEY:

3 Q With respect to the e-mail, sir, did or did you not turn
4 over all e-mail correspondence with Kenner regarding your
5 investments through Mr. Kenner and your loans obtained from
6 Northern Trust to the FBI or the government?

7 A So just to make sure, you're asking me if I --

8 Q I'll rephrase the question. I'll break it down.

9 A Okay.

10 Q All the e-mails in your possession concerning
11 communications between you and Phil Kenner that relate to the
12 time where he was recommending investments to you in return
13 for those recommendations were making investments, did you
14 turn all of those e-mails over to the FBI and the government
15 prior to today?

16 A Well, this -- this is -- what I saw was all of the
17 e-mails -- well, kind of sent back to me, but from all the
18 e-mails that I previously sent to my former lawyer.

19 Q When you say sent back, you're referring to the e-mails
20 that were sent back to you by the FBI?

21 A Mm-hmm.

22 Q My question is simply this, is there a body of e-mails
23 between yourself and Phil Kenner on computer, laptop,
24 downloaded hard copy, that comprise the e-mail correspondence
25 between you and Phil Kenner with respect to the investments he

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1 recommended to you?

2 A You're asking me if the FBI --

3 Q No, no. Does that exist someplace?

4 A Possibly. Possibly.

5 Q On the possibly qualification, where possibly would that
6 be?

7 A On my computer. What I had done is get off it what I
8 could find and send it to my former lawyer. And so that's
9 what I did back then.

10 Q My question is this, sir, what you could find, is it, to
11 your knowledge, every communication between you and Phil
12 Kenner or did you just pick out certain communications and
13 send them over to your lawyer, as it relates to communications
14 between you and Phil Kenner concerning the investments he
15 recommend to you?

16 A There's probably more stuff over a number of years, more
17 communication than what was sent. I mean, it's the content
18 that was -- that was provided back then was stuff that could
19 help the lawyer to understand what was going on, I guess.

20 Q So you made a selection of the e-mails. There's nothing
21 wrong here. You made a selection of e-mails that you thought
22 were relevant, and you sent those off to your lawyer, correct?

23 A What I remember is saving some of this stuff that was --
24 okay. Because I don't think I saved everything, but I know
25 that I was saving some stuff that could be useful. At some

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1 point, the government was going forward.

2 Q By the way, apart from e-mails, you would discuss with
3 Phillip Kenner on the phone your investments, would you not?

4 A Early on we were connecting by phone a lot.

5 Q During that period of time you were connecting with Phil
6 Kenner on the phone a lot, the subject of that conversation
7 was the investment that he was recommending, isn't that
8 correct?

9 A Yeah. It was about how he -- it was a mix of, you know,
10 personal stuff and business stuff. You know, how he -- how
11 the investments were going and stuff like that. It was
12 really, I saw this as a friendship relationship.

13 Q I don't deny that, sir. My question simply was, during
14 the course of those telephone conversations early on, in
15 addition to family matters, you and Phil discussed freely
16 his -- your investments and his recommendations, correct?

17 A Yes. And when I had questions, I probably asked.

18 Q When you probably asked a question, did he answer the
19 question, yes or no?

20 A Yeah, I believe so.

21 Q Did Phillip Kenner, in either words or actions, ever
22 prohibit you from communicating with the officials at the
23 Northern Trust Bank?

24 A No. I can't say that, no.

25 Q As a matter of fact, there did come a point in time where

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1 you had a question about the status of your line of credit and
2 you communicated directly with Mr. Mascarella with Northern
3 Trust, isn't that true?

4 A I think I first asked Phil Kenner about it, and then went
5 up to see the name of the Northern Trust person. And it was
6 the first time I remember contacting someone at Northern
7 Trust.

8 Q Does the name Aaron Mascarella, M-A-S-C-A-R-E-L-L-A, come
9 to mind?

10 A Yes.

11 Q Please take a look at this document marked Kenner
12 Exhibit 3. In an effort to be complete, it is a 9-page
13 document. Would you please take a look at this document, sir.

14 (Handing.)

15 (Pause in proceeding.)

16 Q Do you recognize that document, sir?

17 A Yes.

18 Q What is it, just so we know?

19 A It is e-mail exchanges, some between me and Phillip
20 Kenner and the other one was Mascarella from Northern Trust.

21 Q As you sit here on the stand under oath, is that a
22 document that reflects e-mail communications between the
23 parties that are reflected on that document?

24 A Yes.

25 MR. HALEY: I would offer that, Your Honor, as

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1 Defendant's Exhibit --

2 THE COURT: 3?

3 MR. HALEY: -- 3.

4 MR. MISKIEWICZ: No objection.

5 THE COURT: Mr. LaRusso, is there any objection?

6 MR. LaRUSSO: No, Your Honor. I am sorry.

7 THE COURT: Defense Exhibit Kenner Exhibit 3 is
8 admitted.

9 (So marked as Defendant Kenner Exhibit 3 in
10 evidence.)

11 Q I am not going to read the entire document. For the
12 purposes of the record, I'd simply like to read into evidence
13 from Aaron Mascarella to Joe Juneau. Object -- Re: Northern
14 Trust line of credit.

15 THE COURT: I don't see more than one e-mail. But
16 it may be that the e-mails are in reverse order. Are you
17 going to read a series of e-mails or just one e-mail?

18 MR. HALEY: Just that first paragraph, Judge. It's
19 a series of e-mails.

20 Q And again, just for the record (reading:)

21 "Mr. Juneau, thank you for your inquiry, period.
22 Yes, Phil is correct hat the Little Isle line of credit for
23 which your Northern Trust Investment Account, AMAS, was
24 pledged has been paid off and closed. Your AMAS is now free
25 from any restrictions. You're welcome to contact me at any

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1 time if you have any other questions. Respectfully, Aaron
2 Mascarella, 2nd Vice President Commercial Lending."

3 MR. HALEY: May I have a moment, Your Honor?

4 THE COURT: Yes.

5 MR. HALEY: Thank you.

6 Q So this was -- let's take a look at this document. It
7 was actually presented to you yesterday. Government's
8 Exhibit 2152. And again, I want you to have a gross
9 familiarity with it; you don't have to read page by page.

10 Take a look at it.

11 (Hanging.)

12 A Yes.

13 Q Specifically, sir, please take a look at the page, final
14 page, which I'm pointing to right now.

15 A Yes.

16 Q Is that your signature? Is that your signature, sir?

17 A It looks like it, yes.

18 MR. HALEY: Your Honor, I now offer that into
19 evidence.

20 THE COURT: Any objection?

21 MR. MISKIEWICZ: May I have a voir dire?

22 THE COURT: Yes.

23 VOIR DIRE EXAMINATION

24 BY MR. MISKIEWICZ:

25 Q The signature, you testified, is yours. Do you remember

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1 seeing the entire document?

2 A I don't recall this.

3 Q The documents were dated --

4 MR. MISKIEWICZ: May I approach, Your Honor?

5 THE COURT: Yes.

6 Q The documents were dated in or about 2003. Do you
7 remember in or about 2003, early 2004, getting that document?
8 I don't mean the signature page. I mean the whole document.

9 A I don't. Obviously, I don't.

10 MR. MISKIEWICZ: We object.

11 THE COURT: Overruled. 2152 is admitted.

12 Any objections, Mr. LaRusso?

13 MR. LaRUSSO: No, I do not, Your Honor.

14 (So marked as Defendant Kenner Exhibit 2152 in
15 evidence.)

16 CONTINUED CROSS EXAMINATION

17 BY MR. HALEY:

18 Q I'm going to show you a document marked Kenner Exhibit 1.
19 Admittedly, it is a lengthy document. But if you'd simply
20 peruse it; you don't to have read word by word. Just if you
21 are familiar with the content.

22 (Hanging.)

23 Mr. Juneau, I am sorry to interrupt you. I reached
24 a stipulation with the government with respect to that
25 document.

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1 MR. HALEY: Your Honor, I will be submitting this as
2 Kenner Exhibit 1 pursuant to stipulation.

3 THE COURT: Any objection?

4 MR. LaRUSSO: No, Your Honor.

5 THE COURT: Kenner Exhibit 1 is admitted in
6 evidence.

7 (So marked as Defendant Kenner Exhibit 1 in
8 evidence.)

9 Is the government reviewing the document to be shown
10 to the witness?

11 MR. HALEY: I'm sorry, Your Honor. Exhibit 2. I
12 don't know if we have a stipulation in connection with that
13 exhibit.

14 MR. MISKIEWICZ: It is stipulated.

15 THE COURT: Kenner Exhibit 2 is admitted.

16 (So marked as Defendant Kenner Exhibit 2 in
17 evidence.)

18 MR. HALEY: Thank you, sir.

19 THE COURT: Any objection, Mr. LaRusso?

20 MR. LaRUSSO: I do not, Your Honor.

21 Q Would you kindly take a look at Kenner Exhibit 5. This
22 is a 1-page document.

23 THE COURT: Okay. Mr. Haley, he is ready.

24 MR. HALEY: Thank you.

25 Q Do you recognize that document, sir?

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1 A No.

2 THE COURT: Mr. Haley, the document is sideways.

3 MR. HALEY: I'm sorry, Judge.

4 Q Sir, yesterday when you were answering questions about
5 whether you saw certain documents presented to you by the
6 government, and you would answer "I don't think so," that was
7 your best answer at the time yesterday, is that correct?

8 MR. MISKIEWICZ: Objection to form.

9 THE COURT: Do you understand the question?

10 THE WITNESS: I think so.

11 THE COURT: You can answer it.

12 THE WITNESS: Yes, I was trying to answer the best
13 that I can.

14 Q I know you were. That's not my question, sir. By that
15 answer, you're not saying under oath, are you, that I never
16 saw that document, are you?

17 A I'm saying that I don't remember. That's what I'm
18 saying, I don't remember seeing these documents.

19 Q When you testified yesterday that you saw a document and,
20 at times, it didn't make sense to you, what, if any, efforts
21 did you make to consult with a colleague, another attorney,
22 another investment advisor, to assist you in your
23 understanding of that particular document?

24 A Well, when I had Phil Kenner as a advisor, I obviously
25 would try to reach him. And later on when I had someone else

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1 doing -- you helping me with things, I'm trying to do this and
2 all that I can do.

3 Q Well, is it your testimony, sir, though there may have
4 been delays in the communication between you and Phil, that he
5 would refuse to answer your questions?

6 A At one point, I was trying to reach him by phone with no
7 answers. At one point, one day he actually picked up the
8 phone and -- after, you know, I had blocked my number. I
9 figured that's why the phone was picked up that day. He said,
10 Can I call you back? He never called back. And I don't
11 believe we ever talked on the phone after that.

12 Q And did that happen toward the end of your relationship
13 with Phil Kenner where you suggested, well within your rights,
14 that you no longer wanted to continue your investments with
15 Phil Kenner? That happened at the end, did it not?

16 A From what I remember, it happened -- I guess it was like
17 the summer of '05. At that point, the way I felt was that for
18 some reason I was trying to, by e-mail communications or
19 trying to reach by phones, somehow that was everything that I
20 had put into this stuff. I mean, it was -- I felt that if I
21 just cut out things, that money would stop for sure.

22 Q But you didn't lose everything you put into this,
23 correct, sir? You got back -- the LLC was refunded, the LLC
24 should -- the line of credit was refunded, the line of credit
25 was closed, and you didn't lose your collateral. So you

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1 didn't lose that line of credit, correct?

2 A Well, the line of credit got repaid, yes. But looking at
3 the different numbers and investments, if you call it
4 investments, I believe I lost over 2 million.

5 Q Really?

6 MR. MISKIEWICZ: Objection.

7 MR. HALEY: I apologize.

8 THE COURT: Sustained. The jury will disregard.

9 Q You told the government on direct that there was the
10 investment in the Avalon Air Park, correct?

11 A Yes.

12 Q That was a \$500,000 investment, correct?

13 A Yes.

14 Q You received an airplane valued at approximately
15 \$330,000?

16 A Those were the numbers that were thrown at us by -- you
17 know, I tried to salvage my investments. That's what they
18 were telling me it was worth. That's why -- that's the figure
19 I was given.

20 Q So when you say you loss in excess of 2 million, are you
21 calculating your view of what your investment would have made
22 had they come to fruition in connection with the projected
23 profitability and things of that nature? Is that what you're
24 referring to?

25 A Well, when I'm looking at it --

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1 Q Sir, it's a question, and it's a very simple question.
2 When you say you lost in excess of 2 million, are you talking
3 about the profit these various investments would have made for
4 you had they come to fruition, things of that nature?

5 A I'm not looking at the eventual growth or whatever. I'm
6 looking at what I believe was getting out of my portfolio for
7 different private deals that never came back.

8 Q Because those deals did not work out, correct?

9 A I'm not getting too many explanations. That I was trying
10 to contact that one person that could explain things. At that
11 one point what you saw in the e-mail, it was very limited.

12 Q My question is, you invested a certain amount of money in
13 a variety of investments, including the Bahamian Bank
14 investment recommended by Mr. Kirkland. And as a result of
15 those investments, a good number of them did not work out,
16 correct?

17 MR. MISKIEWICZ: Objection.

18 THE COURT: Yes, sustained.

19 Q You testified in a previous proceeding known as the Nolan
20 arbitration, sir. Do you remember that?

21 A Yes.

22 Q Do you remember being asked questions about your
23 understanding that there are risks in investments?

24 A Yes, I do understand that there are risks in investments.

25 Q As a matter of fact, sir, when you were asked, "When you

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1 invest in the stock market, does the broker guarantee the
2 stock is going to go up?" You answered, "Obviously not,"
3 correct?

4 A (No audible response.)

5 Q Mr. Kenner never represented to you that there would be a
6 guarantee of return on your investment, did he?

7 MR. MISKIEWICZ: Objection.

8 THE COURT: Overruled. You can answer that.

9 A Well, did he ever guarantee, no. But it was presented
10 specifically by Kenner, You'll get your money back soon. So I
11 can't say that he said it's guaranteed that you'll get it
12 back. I don't remember anything like that.

13 Q Well, we can agree, sir, that when asked the following
14 question you gave the following answer in the Nolan
15 arbitration (reading:)

16 "QUESTION: I'm trying to focus you specifically.
17 Did Mr. Kenner guarantee that you would make money in that
18 investment?

19 ANSWER: I just said no, right."

20 Do you remember giving that answer?

21 A No. I don't. But it's possible that, yes, I gave that
22 answer.

23 MR. HALEY: May I have one moment, Judge?

24 THE COURT: We'll take a break in a minute. I just
25 want to finish with Mr. Haley first.

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1 MR. HALEY: Judge, I apologize. I am collecting
2 exhibits.

3 Exhibit 2, Your Honor.

4 THE COURT: That is already in evidence.

5 MR. HALEY: Yes, sir. I think it's up there with
6 the witness. Thank you, sir.

7 (Document retrieved.)

8 Your Honor, I apologize. There's one document I
9 need to copy to ask the witness a question.

10 THE COURT: Why don't we take a break.

11 MR. HALEY: Thank you. I thank you for the
12 consideration.

13 THE COURT: We will take the morning break. Don't
14 discuss the case.

15 (Whereupon the jury leaves the courtroom at
16 11:20 a.m.)

17 We will take a break. Mr. Juneau, you may step down
18 from the witness stand.

19 Before taking the break, Mr. LaRusso, do you want to
20 tell me what the issue is so we don't have to take another
21 break?

22 MR. LaRUSSO: Yesterday I had turned over to the
23 government the exhibits that I was hoping to use on
24 cross-examination since that was the procedure we were hoping
25 to follow.

1 THE COURT: It's a great procedure.

2 MR. LaRUSSO: It is. This morning, Mr. Miskiewicz
3 indicated that he is objecting to many of the bank records
4 that I was hoping to get stipulations on, and it relates
5 directly, we claim, to the issues that are in the indictment.
6 If I may explain, kind of like what we were talking about in
7 my opening where we're having this goal post constantly moving
8 on us.

9 In the original indictment, Your Honor,
10 Paragraph 31, the government alleged, in fact, Kenner had
11 acquired his ownership interest in Eufora using \$250,000 that
12 Kenner had fraudulently obtained from John Doe Number 8, which
13 is Owen Nolan, by falsely representing -- and I'll insert Owen
14 Nolan, if I may, Your Honor -- that the 250,000 would be used
15 to invest in a real estate project in Mexico on John Doe
16 Number 8's behalf, Owen Nolan.

17 This is in reference to the sale of the stock that
18 takes place many years later in 2008 and 2009. That's the
19 source of the stocks that the government is alleging that
20 Mr. Kenner sold and kept the proceeds, sold to the hockey
21 players and fraudulently didn't tell him that he was the
22 individual behind the sale.

23 So my point is, Judge, that is the original position
24 that they would take. We filed a motion to dismiss for
25 prosecutorial misconduct. We laid out the facts that it

1 couldn't have been Owen Nolan. What do we get? We come to the
2 Court and we ask the Court for permission to get clarification
3 on this general indictment that they returned. And
4 Mr. Miskiewicz did, on several correspondences give us
5 information a little bit more specific. And here's what he
6 says, Judge, about Paragraph 31 in a document 211 filed
7 April 23, 2015, on page 4 (reading):

8 "Questions regarding the superseding indictment.
9 The following summarizes the government's responses to your
10 request clarification arising from a return of a superseding
11 indictment." And then he -- he then says, "The underlying
12 indictment specifics that" -- and he then quotes what I just
13 read to the Court, all right.

14 Then on the next page -- actually, it's highlighted
15 (reading):

16 "The John Doe referenced above is Joseph Joe Juneau,
17 currently John Doe Number 6. The government will seek to
18 introduce wire transfer and bank records provided in the
19 discovery showing that a \$250,000 wire from Juneau for an
20 investment in Mexico at Kenner's request was subsequently
21 rewired at Kenner's direction and used by Kenner to acquire
22 his ownership share in Eufora. Juneau will testify that he
23 never authorized such transfer of his funds. Juneau does not,
24 to date, know that Kenner used his money to buy a share of
25 Eufora using money stolen from Juneau's intended investment in

1 Mexico."

2 I opened to the jury, I indicated to the jury that
3 that was incorrect as well. And what the evidence will show,
4 Your Honor, is that Mr. Juneau, in fact, invested in Diamanté
5 Del Mar two times; \$250,000 on August 15, 2002, and
6 September 24, 2002. Those monies were converted into a
7 \$500,000 equity ownership the following year. Our evidence is
8 going to show that Juneau's money could never have been
9 transferred as the government alleged first in the original
10 indictment and then in their letter just about a week and a
11 half ago. And now, Judge, they're changing it completely and
12 they're saying everything relative back to August of 2002, and
13 Mr. Juneau's deposits that were taking place is not relevant.

14 So I lay out for the Court the fact that I was going
15 to do two things on cross. I was going to highlight and refer
16 to the indictment, I was going to refer to the letter and I
17 was going to show Mr. Juneau's record showing his deposits.
18 Two other hockey players deposited at the same. One,
19 actually, on the same day that he made it, and then another
20 hockey player a couple of days before. And leave the jury
21 with the evidence, not a speculation that there were several
22 other hockey players that invested at the same time. And the
23 government's theory and the government's representation, the
24 government's argument that they have been making is false.

25 That's part of our defense. They're constantly

1 shifting the goal posts and constantly presenting additional
2 evidence, Judge. Changing the theory when they're shown that
3 they're incorrect.

4 I think one of the most disturbing aspect of this,
5 Judge, these allegations were made, I believe, without a full
6 examination of all the records. I believe the documents I
7 gave them, they may not have had them all. And it shows
8 something different than what they're saying today. I hope
9 I'm wrong, Judge. If that's true, I'm sure Mr. Miskiewicz
10 will represent that to be accurate. But if it isn't, I
11 apologize in advance.

12 Your Honor, two other individuals are Mr. Wooley,
13 another hockey player, and Mr. Khristich, both of whom are not
14 listed in the indictment. Those are the other two investors
15 at the same time that I was referring to.

16 Judge, let me just tie this all in. This is the
17 source of Kenner's ownership interest in Eufora that gets sold
18 in 2008 and 2009. So if there is no victim in 2002, as the
19 government alleges, I don't know what the real answer is, at
20 this point, that the evidence is going to show. We have a
21 right to show the basis upon which this entire theft the
22 government claims occurred.

23 THE COURT: Okay. Mr. Miskiewicz, do you want to
24 respond?

25 MR. MISKIEWICZ: I'm not going to debate what the

1 prior indictment said or didn't. We're not here trying the
2 underlying indictment. We're here on the superseding
3 indictment. Superseding indictment makes reference to this
4 transaction specifically because the government, as a
5 tactical -- for tactical reasons, realizes that the defendants
6 want to make this all about Mr. Jowdy and the investments in
7 Mexico and investments in condominiums, et cetera. We didn't
8 elicit any of this information from Mr. Juneau, or contemplate
9 that Mr. Juneau had no relevant testimony about it.

10 Moreover, the documents that I was provided, which I
11 don't know where they came from, they appear to have --
12 they're so old that they're beyond the retention date of most
13 of the banks. Much of what Mr. LaRusso just said is the
14 interpretation and testimony of the documents. I have no idea
15 where he's getting them from.

16 I know this, Mr. Juneau can't say that a wire
17 transfer of his or a wire transfer of Mr. Wooley's or a wire
18 transfer of Mr. Khristich was ultimately used and stolen by
19 Defendant Kenner to buy his ownership interest in Eufora.

20 So we're going way out of what the jury is here to
21 decide, which is very clearly laid out in the existing
22 indictment. And what I'm hearing here is that all of these
23 exhibits and this cross examination is essentially going to do
24 what both attorneys tried to do in their opening, which is to
25 say don't focus on this indictment, focus on the other

1 indictment, and by the way, look at changes that have been
2 made by -- allegedly made by the government.

3 That is, I submit, beyond the scope and it's not
4 relevant. And it's certainly more prejudicial, unfairly
5 prejudicial, than probative because it's going to require us
6 to call in a number of additional witnesses who, similarly,
7 will also say they didn't know that their money was stolen by
8 Mr. Kenner in connection with Baja Development Company, a
9 portion of a number of frauds that are not part of this
10 indictment.

11 MR. LaRUSSO: Judge, can I respond briefly?

12 THE COURT: Before you respond, Mr. LaRusso is
13 suggesting to me that the government is walking away from a
14 theory in the case in the prior indictment. He said there are
15 things in a letter a week and a half ago that he's saying is
16 no longer the case. That's what I'm confused about.

17 MR. MISKIEWICZ: No, I don't think I walked away
18 from it.

19 THE COURT: You're saying that they're walking away
20 from something they told you a week and a half ago.

21 MR. LaRUSSO: It appears to be, Judge. This letter
22 relates to the present indictment.

23 THE COURT: So I want you to respond to that. Is
24 the government walking away from something that they wrote in
25 a letter a week and a half ago?

1 MR. MISKIEWICZ: I'm not walking away from it, Your
2 Honor. There were -- there were enough -- numerous wire
3 transfers simultaneously made from -- or to Baja Development
4 Company; Khristich, Wooley, Mr. Juneau. The question in the
5 Bill of Particulars was who was referenced in the underlying
6 indictment.

7 THE COURT: The underlying or the original?

8 MR. MISKIEWICZ: Well, in the original indictment,
9 who were we referencing. And I did reference Joe Juneau
10 because that's who it was. The fact that there were
11 simultaneous wire transfers, money commingled. And then
12 ultimately, some of that money being used to buy into Eufora.
13 Yes, it's our theory that, the argument is that Mr. Juneau,
14 you know, his cash ultimately, commingled with other victims,
15 ended up in Eufora. And we decided -- but that's not --
16 that's not part of our theory of the case. It has nothing to
17 do with the underlying fraud regarding either Eufora or Hawaii
18 or anything else.

19 THE COURT: Then what do you argue to the jury with
20 respect to this victim? What are you arguing with respect to
21 fraud as to this victim, wasn't it that some of his money
22 ultimately ended up in Eufora that he didn't know about?
23 Isn't that your argument?

24 MR. MISKIEWICZ: No. I didn't elicit anything from
25 this victim about Eufora. This victim is here, basically, to

1 set up what will be shown to be a Ponzi Scheme portion of
2 Hawaii land -- letters of credit. And also, later on, another
3 aspect of the fraud. But I did not elicit from him that any
4 of his money went to Mexico. He didn't know about Mexico. I
5 didn't elicit it. If I asked him the question, he doesn't
6 know anything about what some of these other transactions are.

7 THE COURT: Okay.

8 MR. LaRUSSO: Your Honor, you know, one of the major
9 concerns we have is knowing what we're defending. Because
10 they went from a specific indictment to a general, the Court
11 asked us to try and get together to know exactly what we're
12 defending. This letter is a week and a half before trial, and
13 they're alleging Mr. Juneau is a victim of a fraud. Well, the
14 evidence is going to suggest the opposite.

15 Now, Mr. Miskiewicz seems to be tap dancing right
16 now. He hasn't answered the Court's question directly. Are
17 you alleging that Mr. Juneau was, in fact, a victim or wasn't
18 he a victim? But the answer is because the documents I showed
19 him show that he's not, or at least it could have been
20 somebody else and not Mr. Juneau. That's what those documents
21 are going to show.

22 And I wanted to put before this jury -- I don't want
23 to call Mr. Juneau back. I don't think that's fair to him. I
24 want to show him the documents that relate to his investments.
25 I want to show him the government's allegations. I want to

1 show Mr. Juneau that he got his investments, he got his
2 ownership. And therefore, it's for the jury to come to a
3 conclusion whether the money was stolen or not.

4 THE COURT: Well, again, I have fundamental concerns
5 about you holding up an allegation that the government is not
6 seeking it as part of the case and start arguing with the
7 witness and with the government about whether that allegation
8 is true or not true. That's going to hopelessly confuse the
9 jury, that the government is not even seeking to prove an
10 allegation that you introduced to the case, an allegation from
11 a prior indictment, and then try to disprove that when the
12 government is sitting here today saying that's not what we're
13 arguing to this jury anymore. We made a decision not to try
14 to pursue that as a fraud.

15 Why would we do that? Why would we put before the
16 jury a fraud that is in a prior allegation, a prior
17 indictment, that the government's saying we're not seeking to
18 prove at this point?

19 MR. LaRUSSO: I guess, Judge, I didn't make myself
20 clear.

21 THE COURT: You keep saying they shouldn't move the
22 goal posts.

23 MR. LaRUSSO: I should make myself clear, Judge.
24 What they alleged in the original indictment and what they're
25 alleging in this letter, they said this is the basis for a

1 fraud in 2008 and 2009 because Kenner is selling his shares of
2 stock in Eufora to the hockey players. This is where the
3 ownership interest comes in. It comes in back in 2002 by
4 diverting the money of Diamanté Del Mar to Eufora. That's
5 what they were alleging as of a week and a half before, that's
6 what they were saying.

7 I have a fundamental problem here, Judge. I spent,
8 in terms of preparation an inordinate amount of time trying to
9 address what I thought were going to be the allegations in
10 this case. That's number one. But I understand the Court's
11 point. I understand the Court's point. If the Court allows
12 them to make a change in their theory, and I can't convince
13 the Court that I have a right to let this jury know, which is
14 part of our case, that they keep changing the facts because
15 they don't have all the evidence. And I think the word is
16 goal posts. If that's the Court's ruling, I'll live with
17 that.

18 The bottom line is, Judge, the basis of the fraud
19 that he's now claiming that he's going to present is still the
20 diverted shares which were not diverted. So I have at least a
21 right to question Mr. Juneau about his investment to let the
22 jurors know later on that there was no fraud in regards to
23 sales of stock by Mr. Kenner. That's my point.

24 THE COURT: Okay. Mr. Miskiewicz.

25 MR. MISKIEWICZ: In brief, what Mr. LaRusso claims

1 to be our theory is really part of his defense. It is not,
2 nor has it ever been, part of our theory. The investors were
3 several years after Mr. Juneau disentangled himself from the
4 defendant, induced to buy shares of Eufora not knowing that at
5 the same time Mr. Kenner and Mr. Constantine were touting this
6 as the greatest company, they were dumping their shares.

7 Essentially, in essence, other than the fact that
8 it's not a publicly traded company, they were pumping and
9 dumping. This has nothing to do with Mr. Juneau's -- whether
10 his money commingled with other people's money served as a
11 basis for Mr. Kenner to steal his way into Eufora is not part
12 of our case.

13 Moreover, the last point, regarding tap dancing.
14 Had I not explained the full -- what we believed to be the
15 full trafficking of money, we would be accused of, you know,
16 leading them down the primrose path and then eliciting and
17 sandbagging them.

18 I wanted Mr. LaRusso -- in all fairness, to explain
19 what we believe ultimately happened. But that is not -- it's
20 not in the indictment. The fact that I gave him more
21 information than I should have shouldn't be the reason to
22 hoist me on a petard, or the government, Your Honor. Thank
23 you.

24 MR. LaRUSSO: Your Honor, this was done specifically
25 to give us the information of what were in the charges. We

1 wanted to know that. And now the government is -- and I think
2 they're tap dancing because they're trying to back off of a
3 representation made a week and a half ago that this was the
4 victim of a fraud.

5 THE COURT: Okay. This is my ruling, Mr. LaRusso.
6 I have some concern that what Mr. Miskiewicz said is correct.
7 The government may have given you a very broad outline of the
8 details what they believe of what happened here. It does not
9 necessarily then commit them to proving up every aspect of it
10 just because you asked a question about it. You wanted as
11 many as details as possible. They've responded. And now
12 you're saying well, unless they're going to prove this
13 argument, they're changing their theory. Just because you
14 asked a question does not mean that they then have to pursue
15 every potential avenue of fraud that they may have believed
16 they saw in connection with the investigation.

17 So my ruling is the same as it was yesterday, which
18 is, I'm not going -- I'm certainly not going to let you start
19 bringing up indictments or letters to this witness and start
20 showing him in order to do a mini summation to the jury.
21 Okay, let's take this allegation and try to disprove it with
22 the witness.

23 If you believe, if you believe that it's relevant to
24 your defense to go through. If you think it's necessary to
25 complete the picture to show the jury there was no fraud in

1 some area of the transaction that the government is alleging
2 there is a fraud in before the jury, if you think that's
3 relevant to your defense, I'm going to let you do it, okay.
4 Assuming, obviously -- I don't think the witness will be able
5 to recognize the documents that you're going to show him. So
6 I think he's the wrong witness to try to do that with.

7 MR. LaRUSSO: No. I think he will be able to
8 identify some of the documents.

9 THE COURT: Okay. I just want you and your client
10 to understand that you're introducing this into the case
11 because you believe it's relevant to the defense. You heard
12 what the government has said. I want you to understand that I
13 made no rule and I'm highly skeptical that somehow all these
14 letters or the indictment that the government has written to
15 you is going to come in. I asked you for authority suggesting
16 that I should allow that, and I'm open to that, but I want you
17 to understand that you are asserting these other facts into
18 the case, you know, because you're telling me it's relevant to
19 your defense. That's where we stand. Okay?

20 MR. LaRUSSO: Thank you, Your Honor.

21 THE COURT: You can try to introduce any evidence
22 that you want. I'm not precluding you from going into this
23 with the witness to see what he knows. I'm continuing to
24 preclude any attempt through the witness to start introducing
25 other versions of the indictment or letters that Mr.

1 Miskiewicz sent you. Okay?

2 MR. LaRUSSO: It's going to sound like a broken
3 record. I apologize. I move for a severance. I move to be
4 precluded from the case. I was preparing this case based upon
5 an information that was provided by the government and charged
6 in the indictment. I'm now face a pump/dump scheme. I don't
7 know where this is coming from. This is a totally different
8 theory.

9 THE COURT: I heard him say he wasn't attempting to
10 do that.

11 Right, didn't you say that? Maybe I didn't hear
12 that.

13 MR. MISKIEWICZ: No. That's exactly right. He
14 posits that somehow the fraud regarding Eufora originates with
15 how Kenner got his ownership in Eufora. That is not part of
16 our case. We have not elicited anything.

17 He posits that somehow, I don't know, there was some
18 exchanging of shares. I think that the evidence, when it
19 comes in through the other evidence, will show, in essence,
20 that at the moment people were being induced in 2008 and
21 2009 -- other witnesses, not Mr. Juneau -- to purchase shares
22 of stock in Eufora, the other defendants were selling out
23 and/or using the proceeds for reasons that had nothing to do
24 with Eufora. That's in the indictments. So we're not
25 changing that at all.

1 MR. LaRUSSO: Judge, first of all, I disagree. I
2 believe the record will be clear. I thought he said pump and
3 dump, Judge, that that was going to be their theory what we're
4 talking about in terms of the diversion.

5 But what's amazing to me is that the government, in
6 this letter, says that Juneau was the victim of a fraud. Not
7 Owen Nolan anymore. It's Mr. Juneau. That information was in
8 the original indictment to support the basis for the \$700,000
9 in shares that were sold by Mr. Kenner in 2008 and 2009. And
10 now what they're doing is they're coming in at the last
11 minute, because we showed them the records, and they're
12 cutting that off. Saying no, Judge, this is the theory. That
13 was only a letter I wrote to the defendant.

14 Well, you know what, he could have just saved the
15 defense spending all their time preparing a case. I ask for a
16 mistrial or I ask for a severance, Judge, because I was
17 prepared to actually address the facts as presented by
18 Mr. Miskiewicz.

19 THE COURT: In the letter you got a week and a half
20 ago they identified what you asked for with respect to
21 Mr. Juneau.

22 MR. LaRUSSO: They're no longer doing that, Judge.
23 They're not even saying this anymore. I don't know if I said
24 it directly. I don't know if they said Juneau is the victim
25 of a fraud. I think they hedged on that because they just

1 don't know. They just don't know what the source of the
2 \$700,000 of shares were that were sold in 2008 and 2009.

3 THE COURT: Okay. Again, my ruling is you're not
4 limited in any way in seeking any testimony from this witness
5 that you believe is a defense to allegations from the
6 government, either currently or you believe were prior
7 allegations. It's up to you to decide what you want to cover.
8 Okay?

9 MR. LaRUSSO: Your Honor, may I? I just have one
10 further point. Just for the record, for future usage if need
11 be. My client is charged with conspiracy for selling shares
12 that the government claims are stolen. It's like -- it's like
13 they're changing -- they're charging. I'm sorry. They're
14 charging -- my client wants this on the record for future
15 purposes. It's like someone charging a person with stealing
16 and selling a stolen car only to find out that the car is not
17 stolen at all. That's our theory. And that's what we'll be
18 presenting to the jury.

19 THE COURT: All right.

20 MR. MISKIEWICZ: Your Honor, dovetailing on this,
21 there were -- the specific exhibits, I don't know if counsel
22 gave you a copy. I can give you these. These are the only
23 copies that I have. But the bank records for Baja Development
24 and Eufora, et cetera, they bear no Bates stamps that we
25 recognize. We don't know where they came from. This is not

1 as if it's something that we subpoenaed it, it came to us.
2 And therefore, why would we object to a stipulation? Because
3 we have no idea where they came from.

4 Similarly, there are agreements, subscription
5 agreements. Some of them are signed -- purported to be signed
6 by Ken Jowdy. I know that I've also asked in that letter to
7 specifically identify forgeries. This is not one of those
8 letters that we've ever seen before in the investigation. So
9 I don't know if this is Ken Jowdy's signature or not.

10 I would prefer not to hold up the presentation of
11 cross-examination, and I really don't want to look like a jerk
12 in front of the jury objecting every five minutes to --
13 because I think we know, we can predict this witness is not
14 going to be able to lay a foundation to these. So I would ask
15 that the Court take a standing objection to the exhibits to
16 the extent they are offered through this witness.

17 THE COURT: Mr. LaRusso, it sounds to me, and I
18 would prefer it to save time, that we not do it document by
19 document. It sounds to me that it's going to be very unlikely
20 that this witness is going to be able to authenticate any of
21 those documents. Now, maybe you can do it through some other
22 witness or further discussion with the government about the
23 source of the documents. I don't want to spend an hour going
24 document by document with a no response. "I haven't seen
25 that. I haven't see that."

1 You're trying to prove an entire defense through a
2 witness who's not going to be able to recognize documents.
3 Obviously he's signed documents. If we have a signature on a
4 document, that would be different. But from what
5 Mr. Miskiewicz is telling me, how are you possibly going to
6 get those documents in through this witness?

7 MR. LaRUSSO: Judge, that's not quite accurate. The
8 settlement agreement is signed by him. The \$100,000 check
9 that got returned has his signature on the back. The e-mail.
10 I have another letter signed by him. I have the promissory
11 note. I have the Baja Management.

12 THE COURT: Okay. Those are all fine.

13 MR. LaRUSSO: I also have the government account
14 where those checks were deposited, showing deposits by
15 Mr. Khristich and Mr. Wooley. As a matter of fact, the
16 government's turned over to me as a certified record. With
17 your ruling, I know where we're headed, the other documents
18 were bank records that don't have any kind of identifying
19 information on it other than maybe Mr. Juneau saying oh, yeah,
20 I wired the money. Yeah, that looks like the wire transfer
21 authorization that I gave.

22 Other than those two, obviously, the Khristich, the
23 Wooley wire transfers, the witness will not be able to
24 identify them because they're not his. But that's where I am
25 with based upon the Court's ruling.

1 THE COURT: Okay. Let's take a short break.

2 MR. LaRUSSO: Judge, could you give me 15 minutes?

3 THE COURT: Sure.

4 Mr. Haley, how much more do you have?

5 MR. HALEY: Your Honor, maybe a minute.

6 THE COURT: All right.

7 (Whereupon a recess was taken at 11:49 a.m.)

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1 (After recess the following occurred.)

2 THE COURT: So again I just want to ask
3 Mr. Miskiewicz to make sure that we're all on the same
4 page here.

5 Mr. LaRusso, I have a copy in front of me and
6 I'm reading it now.

7 The government will seek to introduce wire
8 transfer and bank records provided in discovery showing
9 that a \$250,000 wire by Juneau for investing in Mexico at
10 Kenner's request was subsequently rewired at Kenner's
11 direction -- to acquire his ownership share in Eufora.

12 Is the government going to prove that or not?
13 Is that part of your case?

14 MR. MISKIEWICZ: It is not part of the
15 government theory of the case. And ultimately we decided
16 not to do that because of the commingling of the funds and
17 we have two other investments at the time.

18 THE COURT: Mr. Constantine and Mr. Juneau -- I
19 want you to articulate it in two sentences whether or not,
20 whether the theory of the case is just Mr. Juneau -- or is
21 it Mr. Constantine in terms of --

22 MR. MISKIEWICZ: Again, as I said earlier,
23 Mr. Juneau was geared to give a historical background
24 about how the other investors became involved with
25 Mr. Kenner, and indirectly with Mr. Constantine.

1 Mr. Juneau, it's not our position that
2 Mr. Juneau lost money in Eufora, although we're going to
3 have evidence about this airplane and how that was
4 acquired. And ultimately it has to do with Eufora many
5 years later. But we're not offering any evidence, and I
6 don't believe I elicited any evidence from him concerning
7 the -- development or anything else.

8 (There was a pause in the proceedings.)

9 I'm sorry, I misspoke. Not Eufora. It is for
10 the Global Settlement fund that that airplane would become
11 relevant.

12 THE COURT: Okay. I just want to make sure that
13 we're all on the same page.

14 You heard the government, they're not going to
15 make this argument to the jury. Okay?

16 MR. LaRUSSO: I understand. I having heard it
17 now that they're now using it because they were given
18 documents the other day which showed a different set of
19 facts that now caused us to have spent a considerable
20 amount of time preparing the defense. Their particular
21 allegations that they're going to introduce wire transfers
22 of bank records to show \$250,000 was wired by Mr. Juneau.
23 I'm at a loss, judge. I have never seen this. This is
24 caught us by a complete surprise --

25 THE COURT: Well there are other aspects in the

1 case that -- you're aware of other aspects of the case.

2 MR. LaRUSSO: I'm aware of those, judge. But
3 this relates to \$700,000 that was primarily part of the --
4 fraud. There is three essential aspects. This was a
5 critical one where Mr. Kenner -- and they'll put testimony
6 on by a co-conspirator, that Mr. Gaarn and Mr. Kenner and
7 a few other took his ownership shares in Eufora and
8 created an account in New Jersey and put \$700,000 of the
9 proceeds -- by the way the stock was sold to hockey
10 players -- and that Mr. Kenner got 300,000, Mr. Gaarn got
11 60,000. This is the basis for those shares, judge. That
12 is what this is all about. That is why I was so
13 appreciative of the government finally laying out their
14 evidence to us, or at least told us what they were going
15 to do.

16 Now all of a sudden I have \$700,000. I don't
17 know what I'm addressing at this point. Is it this? What
18 other theory are we going to get to in the course of the
19 trial? I'm at a loss, judge.

20 THE COURT: If you're telling me that the theory
21 of the case, that the government is putting on a theory of
22 the case that you have not ever heard about, it is not in
23 indictment and you never heard about it, then I would
24 concerned. But what I'm hearing is that there was an
25 aspect of their theory that they're not pursuing any more

1 because there was commingling of funds and they decided
2 not to pursue that, maybe because of the evidence you
3 presented to them assisted in that.

4 But the thing I'm concerned about is if there is
5 something, a new allegation of fraud that you're not aware
6 of. These other aspects that they continue to pursue,
7 you're aware of.

8 MR. LaRUSSO: This is the entire basis, this
9 letter, the original charge in the indictment. It spells
10 it out that Mr. Kenner took 700,000. Paragraph 31, judge.
11 It lays it out pretty clearly. And here is the other
12 part, judge.

13 Is that, if that in fact is the government's
14 position in the indictment that the \$700,000 fraud
15 emanated from this, Mr. Juneau's share which they now say
16 was commingled and they don't know who it is any more,
17 that I'm defending a theory that is now completely,
18 completely different.

19 Now I don't know, I actually don't even know
20 what I'm defending at this point. This general notion
21 that this money was stolen. Well how? You tell me one
22 theory, and you provide evidence to me, you make
23 representations to me, you tell me this is what you got to
24 defend. I spend a considerable amount of time and effort
25 in doing so. We pull out documents that are not even

1 available to some people. And they clearly are bank
2 records. And I understand Mr. Miskiewicz, he hasn't seen
3 these documents before, before the case. He has never got
4 them. And that is part of the problem we have with this
5 case. They never looked at all of the evidence. And now
6 here I am, I'm standing here now saying, Okay, what am I
7 going to defend? I'm just --

8 It's frustrating. I think it's prejudicial.
9 Clearly my client, he doesn't understand it. I'm trying
10 to explain it as best I can.

11 But we shouldn't be surprised. That is the
12 notion here, judge. We shouldn't have to at the last
13 minute be surprised as to what we're defending here. And
14 I'm at a loss. You know, I prepared cross at night. I'm
15 trying to get ready and be ready at 9:30. Now all of a
16 sudden they take one part of the case out and say, Hey,
17 hey, it's only a theory. And you guys have to be able to
18 bounce the ball. That's not fair. That's not fair.

19 THE COURT: Okay again, if you want to present
20 to me a position that they've articulated, as opposed to
21 taking apart one allegation away from the case and
22 deciding not to try to prove that up, of them adding
23 something to the indictment that is not in the indictment,
24 that you haven't had time prepare for; that is something
25 that I'll entertain. But you have to put that before me,

1 because I'm not hearing that.

2 MR. LaRUSSO: That is my point. I don't know
3 how they're going to prove that those shares were -- well
4 this is what they told us. This is what we prepared for
5 now. Now what is the evidence going to show? Do I need
6 to find out --

7 THE CLERK: Mr. Miskiewicz, can you respond to
8 that?

9 MR. MISKIEWICZ: I don't understand
10 Mr. LaRusso's statement that shares that were stolen were
11 stolen. I can't respond.

12 He has a defense. I'm trying to get into his
13 head what his defense is. All I can do is say, we allege
14 very clearly in the indictment what the nature of the
15 scheme is. And with respect to the Eufora fraud which is
16 what Mr. LaRusso is referring to, it is laid out in black
17 and white in paragraphs 12, 13, 14. We provided the names
18 of the various John Does in that superseding indictment.
19 Nothing in that existing indictment which we're on trial
20 here about makes any reference to any of the documents
21 that he seeks to offer or transactions dating back to
22 2002, or 2003. It is just not in there.

23 So for him to say, I prepared for something in
24 2002 and 2003, and it's not in there. You know, I
25 understand their part of their contention is, Oh well, the

1 government has conspired against these people. But that's
2 their defense. And we did not change our theory.

3 MR. LaRUSSO: Your Honor, I beg to differ. I
4 think the facts are pretty clear what they were alleging
5 in this letter. You can't read it any other way.

6 What they're now doing, and I don't know exactly
7 what it is they're going to say is the basis for the
8 fraud. But this is what is they've been saying since they
9 indicted my client. They first said it was Owen Nolan.
10 Then they tell me it's Joe Juneau.

11 We showed them documents that it is not Juneau
12 because it was commingled with other funds. And now what
13 they're saying is, we're not even going to play it, we're
14 not even going to introduce it.

15 I mean you talk about a surprise, judge. In
16 terms of how I'm going to respond, I don't know yet. And
17 that is my concern, judge.

18 THE COURT: Okay, well with Mr. Juneau here you
19 can cover anything you wish to cover with him. Okay? If
20 you want to cover the background of the transactions
21 you're free to do that.

22 MR. LaRUSSO: I culled out documents that he
23 can't identify. I'll try to keep it just to ones that he
24 can talk about.

25 And I think Mr. Miskiewicz has another objection

1 to another one of those documents.

2 MR. MISKIEWICZ: Very briefly, when we get to it
3 we're going to object to the introduction of the defense
4 exhibit that is the settlement agreement between
5 Mr. Juneau and Mr. Constantine.

6 And I have said to Mr. LaRusso, I obviously
7 wouldn't object to portions of this, which document, which
8 is probably 20 pages long, that relates to his testimony.
9 What he said, was he got on the plane. And the number
10 stated in the recital here of what the worth of the plane
11 is, is slightly different than what he recalls.

12 I have no objection to that. I have no
13 objection to the fact that there was a settlement I have
14 no objection to the fact that he and Mr. Constantine
15 settled this.

16 The problem is that this settlement agreement is
17 also chock full, and it goes on, and on, and on about how,
18 Mr. Constantine recites, and there is a section called
19 recitals here. And he recites really non sequiturs,
20 things that have absolutely nothing to do with the
21 settlement. How he is innocent of Hawaii. He is innocent
22 of having to do with anything with the Mexico settlement.
23 And how he has done nothing wrong and none of these
24 sources of funds are illegally obtained.

25 And under 408, Federal Rule of Evidence 408, I

1 submit that this is exactly the kind of settlement and
2 compromise offer and accepted compromise, those things
3 should not be admissible in this trial.

4 THE COURT: Why is the rest of the agreement
5 admissible?

6 MR. LaRUSSO: These are the records of the case
7 of Mr. Juneau and nobody else. That is what is in here.
8 This is what he agreed to relative to the settlement as
9 far as he knew.

10 The other portions that Mr. Miskiewicz agrees to
11 kindly introduce deal with portions of his testimony.
12 That is how much was he agreeing to settle.

13 He said that the plane was worth, I think he
14 said 300,000, he may have said 350. Well in the
15 settlement agreement he agrees that it was around 437.
16 And I'll pursue that later on with him.

17 But this is an entire document. I'm just
18 offering what Mr. Juneau agreed to relative to the
19 settlement of his airplane. And I think the jury has a
20 right know what the two parties concluded with regard to
21 what the government is trying to say was a bad deal. That
22 is what they're saying to say.

23 And these paragraphs, judge, if you read them,
24 they clearly show that Mr. Juneau said -- I'm not going to
25 go through all of the paragraphs, just so the Court

1 understands. I'm going to go through just the one dealing
2 with right now with the monies to show him that he signed
3 an agreement that is substantially more than what he
4 remembered.

5 I then will probably show him the letter that he
6 signed, which Mr. Miskiewicz has referred to that, and I'm
7 sure he will, that he signed regarding the settlement,
8 where he said, I'm satisfied, this is the kind of deal I
9 want. It contradicts what he testified, testified to by
10 him.

11 So it is in the agreement.

12 THE COURT: Well the agreement is the
13 confirmation of your client. Why is that relevant?

14 MR. LaRUSSO: If the court is disturbed by that
15 I'll take those protestations out. I have no problem.
16 But Mr. Juneau's comments with regard to what he said
17 should be put in there. That is what he understood the
18 settlement to be. And it contradicts and gives a
19 different light than the way how he views the settlement
20 agreement.

21 THE COURT: Can I see the agreement?

22 MR. LaRUSSO: Yes. Can I ask the government for
23 their version? I unfortunately don't have it on a full
24 page. They have a full one, judge, and it's easier to
25 read.

1 MR. MISKIEWICZ: Your Honor, if I may, just so
2 we're not holding up the jury. I won't, I would agree
3 that perhaps the Court should have an opportunity maybe
4 overnight to determine how much of this should be
5 redacted. And then maybe we can, subject to the colloquy
6 here now, at least some redacted versus of it could come
7 in.

8 MR. LaRUSSO: If the Court is concerned about
9 that, judge, I can highlight a few portions. I think one
10 of them is where Mr. Juneau agrees that there was no basis
11 for his suit against Mr. Constantine. That the money, the
12 first -- it's right at the bottom of, I think the second
13 page, where he talked about the value of the plane.

14 I think that is essentially the only two aspects
15 I'm looking to get out at this point. The others will, I
16 would like to be able to present to the jury in closing to
17 give the jury an idea of what Mr. Juneau actually believed
18 when he settled. It wasn't what he testified to here in
19 terms of, and it was a bad deal that I entered into.

20 That's my overall point, judge. We can do that.

21 MR. MISKIEWICZ: Also your Honor, it is not the
22 government's contention that it was a bad deal and that
23 therefore he should be charged with wire fraud. We're
24 going to prove that the source of the funds and this plane
25 played a role later on with respect to the settlement. It

1 has nothing to -- we're not -- there is nothing here
2 regarding Mr. Juneau's testimony that he was somehow
3 hoodwinked by accepting this plane in settlement. The
4 plane, however, we will try to put it on, as to how
5 Mr. Constantine got the plane and was able to use it, we
6 think in violation of other aspects of the fraud clearly.

7 THE COURT: It has nothing to do with this
8 witness now, nothing to do with him at that point, right?

9 MR. LaRUSSO: Well your Honor, if I may. I
10 think what Mr. Miskiewicz is arguing is not what he
11 brought out from this witness. I mean he emphasized the
12 fact that the plane was less than what he had paid for it.
13 What was the purpose of that? I mean obviously he was
14 trying to paint a picture that this man was forcing the
15 deal.

16 THE COURT: -- have Mr. Miskiewicz stand up in
17 front of the jury that that was not --

18 MR. LaRUSSO: I would love it to finally put on
19 the record exactly where we're going. Are we going the
20 way he questioned the witness, or are we going based upon
21 what he is saying?

22 THE COURT: Why don't we put something on the
23 record that the government is not alleging that the
24 transaction between Mr. Juneau and Mr. Constantine is part
25 of the fraudulent scheme?

1 MR. MISKIEWICZ: The settlement?

2 THE COURT: Yes.

3 MR. MISKIEWICZ: I have no objection. I would
4 rather the Court instruct the jury. That is fine.

5 THE COURT: Okay. Mr. LaRusso?

6 MR. LaRUSSO: The compromise ability -- judge
7 I'm trying to analyze it quickly in terms of the overall
8 case. So just bear with me for one moment please.

9 THE COURT: Yes.

10 MR. MISKIEWICZ: Your Honor, the settlement
11 itself, we're not saying that the settlement is
12 fraudulent. I would hesitate to add, or I would not
13 hesitate to add. That doesn't mean the plane itself, we
14 won't see evidence later on, is part of the fraud.

15 How Mr. Kenner acquires the plane and is able to
16 then flip it to get rid of one problem with Juneau. That
17 will be part of the fraud later on with respect to -- it
18 is part of the overall fraud, or it is part of the money
19 laundering. But you're absolutely -- it is absolutely
20 accurate that it is not our contention that the settlement
21 was fraudulent.

22 MR. LaRUSSO: Your Honor, if I may.

23 Mr. Miskiewicz is correct. They're going to try
24 and establish that the money that was used to buy the
25 plane came from the settlement fund. We agree. My client

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1 was able to take the money from the settlement fund, buy
2 the airplane, and give it to Mr. Juneau. However, what
3 Mr. Constantine was able to do by that is he saved the
4 Global Settlement fund approximately \$100,000.

5 THE COURT: That's a whole different argument.
6 That is obviously your contention. But I want them to
7 understand that -- I just want to take any concern that
8 you have that they're going to think the settlement itself
9 is part of the fraud. But it is not. So --

10 MR. LaRUSSO: I appreciate that.

11 THE COURT: In terms of the settlement
12 agreement, my ruling at this point is that the portion
13 that deals with payment, that the money that he got for
14 the plane, whatever other aspect that you say --

15 MR. LaRUSSO: Judge, right now that is all I
16 need.

17 THE COURT: So it will be redacted. And when we
18 have that in and if Mr. LaRusso wants to try to explain
19 some other portion that is relevant, he can try to do that
20 at that time. Okay? Let's bring in the jury.

21 (The jury entered the courtroom.)

22 THE COURT: Everyone be seated.

23 Members of the jury, before we continue with the
24 cross-examination, I just want to make sure there is no
25 confusion on this issue as far as Mr. Juneau's testimony.

Juneau - Cross/Mr. Haley

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1 The government is not alleging that the
2 settlement between Mr. Constantine and Mr. Juneau with
3 respect to the airplane is fraudulent. They're not
4 alleging that that settlement was fraudulent in some way.
5 It is not part of the alleged fraud in the indictment.

6 The government is seeking to introduce that just
7 because they believe it supports other proof they're going
8 to offer in the course of the trial. But there is no
9 allegation that the settlement agreement itself was
10 somehow fraudulent. Okay?

11 So with.

12 So with that, Mr. Haley, do you want to
13 continue.

14 MR. HALEY: Yes, your Honor, one minute.

15
16 CROSS-EXAMINATION (Continued)

17 BY MR. HALEY:

18 Q Mr. Juneau, kindly a take look at this document
19 marked Plaintiff Exhibit 2 already introduced into
20 evidence. And kindly look at the full document, but I
21 draw your attention to the first paragraph. And I draw
22 your attention to the last page.

23 Mr. Juneau, on the last page of Exhibit 2, do
24 you recognize your signature? There is no question that
25 that is your signature, correct?

Juneau - Cross/Mr. Haley

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1 A I don't believe so, no. Well, it looks like my
2 signature. Sorry.

3 Q That's quite all right.

4 Sir, you testified I believe just before we
5 broke, that to the best of your memory the last
6 communication with Phil Kenner stopped sometime in 2005,
7 correct?

8 A Yes.

9 Q Now as relates to this document, that bears your
10 signature on the last page. We can agree, can we not,
11 sir, that the first sentence reads.

12 To the members of Little Isle IV, LLC, I am
13 writing to tell you about very positive developments
14 concerning your Hawaiian real estate investment through
15 Little Isle IV, LLC, the company, close paren, period.]

16 That is what it says, does it not?

17 A Yes.

18 Q And that is dated when, sir?

19 A July 21, 2006.

20 Q And we can agree, sir, that the signature you just
21 testified a moment ago that says, response form, at the
22 top bears, that is your signature.

23 Is that true, sir?

24 A Yes.

25 MR. HALEY: I have no further questions.

Juneau - Cross/Mr. LaRusso

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1 Thank you.

2 THE COURT: Mr. LaRusso?

3 MR. LaRUSSO: Thank you, your Honor.

4

5 CROSS-EXAMINATION

6 BY MR. LaRUSSO:

7 Q Good afternoon, Mr. Juneau.

8 A Good afternoon.

9 Q I understand that your last three years in
10 professional hockey were with the Montreal Canadians?

11 A Yes.

12 Q How are you they doing?

13 A Huh?

14 Q How are they doing?

15 A Not so well, I think right now.

16 Q Mr. Juneau, you testified yesterday -- by the way, I
17 represent Mr. Constantine.

18 You testified yesterday that you had only met
19 Mr. Constantine once before.

20 Is that correct?

21 A That's correct, yes.

22 Q Okay, let me kind of ask you a couple of questions
23 around that if I could.

24 Do you remember when you met Mr. Constantine?

25 A I think it was in Christmastime, December 2004, if I

Juneau - Cross/Mr. LaRusso

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1 remember right when my family and I visited the Kenners.

2 Q And where do you remember meeting Mr. Constantine?

3 A I think it was at a restaurant having lunch.

4 Q How long did you and Mr. Constantine engage in
5 conversation if you remember?

6 A It wasn't long, probably an hour maybe.

7 Q Any other parties participating in the conversation
8 as well?

9 A Phil Kenner was there.

10 Q It was a social occasion. Is that right?

11 A We discussed a little bit about -- but it was very
12 brief I guess, yes.

13 Q And it was approximately ten years ago?

14 A Yes.

15 Q Your recollection of the conversation is less than
16 complete.

17 Is that correct?

18 You waved your head and moved your eyes meaning
19 that is correct, right?

20 A I don't remember much from that conversation, that's
21 for sure.

22 Q Did you ever visit the Avalon Airpark, or I believe
23 you called it the Scottsdale Airport?

24 A I went there once, I think it was, with Phil Kenner.
25 I'm not sure when it was. And I went there on my own

Juneau - Cross/Mr. LaRusso

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1 maybe in 2005, 2006 when I made a trip to the Phoenix
2 area. And I went there on my own just to see if something
3 was going on.

4 Q And what did you see?

5 A What did I see? I saw the openings, but I wasn't
6 sure that's what it was. You know, I was driving around
7 trying to figure it out.

8 Q This was at an airport.

9 Is that correct?

10 A Scottsdale Airport, that's where I went, yes.

11 Q And you saw what you believed to be a building that
12 you had invested in.

13 Is that right?

14 A Yes.

15 Q And did that building also include a hanger for
16 airplanes?

17 A It looked like it, yes.

18 Q And the building as you understood it was a Eufora
19 building, is that right? Did you go inside? I'm sorry,
20 you didn't answer the question first.

21 A Well I don't know what -- you know what, to me it was
22 the -- I don't know if it was a Eufora or -- it's all
23 confusing to me, so it was the airpark thing.

24 Q Other than the conversation that you recall having
25 with Mr. Constantine, wouldn't it be true, or isn't it

Juneau - Cross/Mr. LaRusso

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1 true that most or all of your conversations regarding your
2 investment articulated about Eufora and the airpark was
3 with Mr. Kenner?

4 A Yes.

5 Q You testified that you actually, you filed a lawsuit,
6 I believe your testimony yesterday was between 2008 or
7 2009. Is that correct?

8 A Yes.

9 Q And that lawsuit was against Mr. Kenner, my client
10 Mr. Constantine, as well as Mr. Gaarn.

11 Is that correct?

12 A There was a number of people in the lawsuit, yes.

13 Q And in fact you were suing anyone or any entity that
14 Mr. Kenner had invested with on your behalf?

15 A Yes. Everything was included, every private deal
16 that I was included in was included in that lawsuit.

17 Q Okay and including some 12 or 13 defendants, correct?

18 A It was a lot of people, yes.

19 Q And did you sue personally by yourself?

20 A Excuse me?

21 Q Did you sue personally by yourself, you were the only
22 plaintiff in the case?

23 A Yes, I think so.

24 Q But there were related hockey player investors also,
25 Mr. Nolan, Owen Nolan, Mr. Moreau?

Juneau - Cross/Mr. LaRusso

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1 A Well I know of Owen Nolan's case because he asked me
2 to testify, I guess.

3 Q And he, like you, if I can get the investments back
4 that you and he had invested through Mr. Kenner, correct?

5 A Yes, my understanding.

6 Q Now would it be fair to say, and maybe I will be
7 repeating myself so bear with me. You were seeking to
8 recover your investments that you made with
9 Mr. Constantine through Mr. Kenner in Eufora and the
10 airpark?

11 A I received a check forwarding a request by e-mail to
12 Mr. Kenner. I eventually received a check through the
13 mail for \$100,000 in Eufora. And the airpark deal like I
14 said earlier, was not paid.

15 Q You anticipated my question. We have been here a
16 long time and I'm trying to get to the point as quickly as
17 I can, so bear with me.

18 So in fact you not only asked for the \$100,000
19 that you invested in Eufora, you actually received a
20 refund.

21 Is that correct, as you just testified?

22 A Yes.

23 Q A return on your investment?

24 A Yes, for Eufora.

25 Q So Eufora, I'm talking about Eufora at this point.

Juneau - Cross/Mr. LaRusso

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1 A Yes.

2 Q And that request was made to Mr. Kenner?

3 A Correct.

4 Q And the next thing you know there was an envelope
5 with a check for \$100,000, I believe you testified in a
6 former proceeding?

7 A Yes.

8 Q In the mail?

9 A Yes.

10 Q Now, do you recall when you actually asked for the
11 money back from Mr. Kenner? Do you remember when?

12 A I asked a few times to get out of these deals and to
13 get my money back. And some notes we went through
14 already, that I was asking to if possible to get my money
15 back.

16 MR. LaRUSSO: Just bear with me.

17 (There was a pause in the proceedings.)

18 Q You had a series of questions of Mr. Kenner and he
19 responded to those. I just want to give you an
20 opportunity to look at it to see if you can be more
21 accurate with regard to the answer to that question

22 MR. LaRUSSO: Your Honor, Government Exhibit
23 728.

24 BY MR. LaRUSSO:

25 Q Mr. Juneau, can you see that?

Juneau - Cross/Mr. LaRusso

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1 A Yes, sir.

2 Q And I'm going to just turn a few pages to give you an
3 opportunity to see the substance of your communications
4 with Mr. Kenner responding to you with regards to actually
5 questions you asked on a subsequent page.

6 Is that right?

7 A Yes.

8 Q And I believe, if I may on the third page of this
9 exhibit. -- you see my finger pointing?

10 A Yes.

11 Q There is the Eufora investment you made for \$100,000.

12 And your question is, Are you making money yet?
13 What are the latest developments?

14 Do you see that?

15 Now in the response by Mr. Kenner, this is on
16 page 2, do you see where I'm pointing?

17 A Yes.

18 Q Mr. Juneau, that would be his response to your
19 inquiry.

20 Is that correct?

21 A Yes.

22 Q I'll read it just quickly.

23 A lot of significant -- and then D-E-L-A-S is
24 the spelling -- I assume that is delays that have been
25 occurring.

Juneau - Cross/Mr. LaRusso

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1 Did you say it that way as a delay as opposed to
2 delas?

3 A Yes.

4 Q I would like to look for outside interest in the
5 company as early as 2006?

6 Do you see that?

7 A Yes.

8 Q That was his response.

9 Now this is May. I'm pointing to the top. This
10 is May 18, 2005.

11 Do you remember when you actually got the check?

12 A No.

13 Q Do you know when approximately you made the request?
14 Because in here you're really asking questions. Would it
15 have been sometime after this that you made the request of
16 him for the return of the \$100,000 investment?

17 A I don't recall asking a question. If I had the check
18 already, the check must have come after.

19 Q I'm sorry.

20 At some point after this you asked for the money
21 from Mr. Kenner and you got a check in the mail. That is
22 what I'm saying.

23 A Yes.

24 Q We just don't have email that says, Mr. Kenner,
25 please give me my \$100,000 back. We have some questions

Juneau - Cross/Mr. LaRusso

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1 for Eufora at this point, right?

2 A Yes.

3 Q I'm just going to try to make it easy. I really
4 don't want to confuse you.

5 I'm asking if you remember when after this
6 e-mail you may have gotten the check back from Eufora?

7 A I don't --

8 Q All right, let me approach.

9 Defendant's Exhibit C-1A. It's actually marked
10 as two separate pieces of paper, C-1A and C-1B.

11 I'll ask you to take a look at both of these.
12 Take your time.

13 Do you recognize that?

14 A That could be the check I received.

15 Q The signature I'm taking about, is that correct on
16 the reverse side of it, of the C-1B.

17 Do you see that?

18 A This would be my signature?

19 Q Can you take a look at it and can you tell me if that
20 appears to be your signature?

21 A This is not my signature.

22 Q You don't see that?

23 A I mean right here?

24 Q Yes.

25 A No, that is obviously not my signature.

Juneau - Cross/Mr. LaRusso

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1 Q Do you remember receiving the check? Well, using
2 that, does it refresh your recollection approximately when
3 you got the check?

4 A Right here it says July 7th filed.

5 Q 2007 or 2005?

6 A 7-7-05.

7 Q Would you say that that would be approximately the
8 time that you received the check after you made a demand
9 back in May?

10 A I mean it looks, yeah it looks like it.

11 Q Now just for the record, this was a full return on
12 your investment that you had made?

13 A Yes.

14 Q Yesterday when this e-mail the government was
15 questioning you on, you were inquiring of Mr. Kenner about
16 your investment Eufora and Avalon.

17 Is that correct?

18 A Yes.

19 Q At this point we now know that you got a full return
20 on the Eufora investment, correct?

21 A Yes.

22 Q Now, jumping ahead.

23 You filed a suit against Mr. Constantine around
24 2008/2009, some three years later, correct?

25 A Yes.

Juneau - Cross/Mr. LaRusso

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1 Q And I believe you also testified that you asked for
2 your investment back on Avalon Park, which was the second
3 investment you had with Mr. Constantine.

4 Is that correct?

5 A Yes.

6 Q And your request of Mr. Kenner for the return on that
7 investment would have been sometime after May 18, 2005.
8 It would be fair to say you made that request -- you're
9 shaking your head. The reporter can't get that.

10 A Yes, you know from that e-mail, yes.

11 Q However, did you ever contact Mr. Constantine
12 directly about your investment in Avalon and your request
13 for the return of the money?

14 A I don't think so.

15 Q Your only requests were to Mr. Kenner?

16 A Yes.

17 Q And it was your hope that Mr. Kenner would in fact
18 communicate that information?

19 A Of course.

20 Q To Mr. Constantine, correct?

21 A Yes.

22 Q Now between the time that you met or were conversing
23 with Mr. Kenner back in May of 2005 until the time you
24 filed your suit, you had no contact with Mr. Constantine?

25 A No.

Juneau - Cross/Mr. LaRusso

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1 Q Nothing?

2 A No.

3 Q No telephone calls?

4 A I don't think I even had his phone number or e-mail
5 address.

6 Q Did you ever ask for his phone number or contact
7 information?

8 A I don't think so. And I didn't feel the need to
9 having a financial advisor relationship.

10 Q And you were going to Mr. Kenner?

11 A Yes.

12 Q So your testimony is that between the time that you
13 started to ask Mr. Kenner for the return on your
14 investments to the time you filed suit you never asked
15 Mr. Constantine about the return on the Avalon Park
16 investment?

17 A If I did I guess it would have been, I would say when
18 we were together for that lunch in December of '04. I
19 don't recall anything else.

20 Q You have no recollection of having that kind of
21 conversation. You're guessing at this point, right?

22 A Well I you know, I'm trying to remember as much as
23 possible. And I don't. So I don't remember.

24 Q My question is, that from time that you were asking
25 for your return on Avalon Park through Mr. Kenner you

Juneau - Cross/Mr. LaRusso

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1 never made direct contact Mr. Constantine? You didn't?

2 You're shaking your head?

3 A Yes. Sorry.

4 Q You didn't have his contact information, telephone
5 number, e-mail or any other information to contact him
6 directly?

7 A No. I don't think so.

8 Q By the way, you testified on, actually direct to
9 having a number of e-mail communications with Mr. Kenner,
10 correct?

11 A Yes.

12 Q That was a method of communication that you had with
13 your financial advisor. Am I right?

14 A Yes.

15 Q Did you ever have any e-mail communications with
16 Mr. Constantine?

17 A I don't think so.

18 Q As a matter of fact, did anyone ask you to go into
19 your computer to see if there were any e-mails from
20 Mr. Constantine?

21 A No.

22 Q So it's your recollection that from the time that you
23 were trying to get your money back to the time that you
24 filled, no e-mail communication with Mr. Constantine?

25 A No.

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1 Q You mentioned that you sued him and what you sued him
2 for. What happened to that suit?

3 A It was discarded. I just decided to move on, decided
4 to turn a page on this whole thing.

5 Q As a matter of fact it was dismissed. Isn't that
6 correct? Not on the merits, but it was dismissed because
7 there was a question of whether where the suit should
8 actually be brought. Is that right -- withdraw the
9 question.

10 Your case was in California, correct?

11 A Yes.

12 Q And it was dismissed because -- are you aware that it
13 should have been brought someplace else?

14 A Not really. It's that the way I looked at it, enough
15 is enough. I just moved on.

16 Q Well in terms of the suit, enough was enough, and you
17 moved on. But you continued your efforts to try and get
18 your money back from Avalon Park, correct?

19 A Well because we had a discussion with, with Tom
20 Constantine.

21 Q Correct. That is what I'm driving at.

22 After your suit was dismissed, there was a
23 discussion that you were aware of that Mr. Constantine
24 actually offered you back a hundred percent of your
25 investment while the suit was pending. Remember that?

Juneau - Cross/Mr. LaRusso

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1 A There was, it was not after the fact, it was during
2 the process.

3 Q I'm sorry, during the process of the suit when it was
4 pending?

5 A I think it was during the process, yes.

6 Q So while the case was spending, and in the process
7 there was an offer made to you to get a hundred percent of
8 your money. Not by you but by your lawyer, right?

9 MR. MISKIEWICZ: Objection.

10 Q Do you know? I apologize.

11 THE COURT: Sustained to the form.

12 BY MR. HALEY:

13 Q Do you have any information as to whether the offer
14 that was made to return the money was accepted or
15 rejected?

16 A If you're talking, meaning the airplane?

17 Q No.

18 I'm talking about during the process, you
19 testified that you were offered a hundred percent of
20 return to your investment. And that didn't happen,
21 correct?

22 A Well, we got in our first discussion where we pretty
23 much found out that there was, there were interests from
24 Tom Constantine to make a deal. And in that first
25 conversation I had a feeling that I could get my money

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1 back. Nothing material, but actually to get the cash
2 back.

3 Q If I may just clarify a little bit if I could.

4 You say there were discussions. Did you
5 participate in those discussions?

6 A A couple, a couple of them for sure, yes.

7 Q And was Mr. Constantine a party to those discussions?

8 A Yes.

9 Q And in those discussions you were made aware that
10 Mr. Constantine had offered a hundred percent return on
11 your investment early on in the discussions.

12 Is that correct?

13 A Well, my impression after the first discussion was
14 that there was, what can I say, an opportunity for him to
15 buy me back.

16 Q Okay, your suit gets dismissed, correct? Is that
17 correct?

18 A Yes.

19 Q Just for purposes of understanding the next couple of
20 questions.

21 The settlement discussions continued, right,
22 with Mr. Constantine?

23 A I don't know -- yeah if it was after, during the
24 process. I don't have a clear time there.

25 Q Do you remember your lawyer actually refusing -- let

Juneau - Cross/Mr. LaRusso

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1 me back up.

2 Was there a parallel suit taking place with
3 yours in California, particularly Owen Nolan?

4 MR. MISKIEWICZ: Objection.

5 THE COURT: No, I'll allow if he knows.

6 A There was a case for Owen Nolan.

7 BY MR. LaRUSSO:

8 Q And are you aware his case was transferred to
9 Arizona?

10 A Well that is what, where I went because he asked me
11 to, if I could testify in his case. So yes, I went to
12 Arizona for that.

13 Q And then at this point your case is dismissed.

14 Is that right?

15 A It's possible. I don't know when my case got
16 dismissed, if there was before that or after. But it was
17 around the same time.

18 MR. LaRUSSO: Your Honor, may this be a good
19 time to break?

20 THE COURT: We'll take a lunch break and we'll
21 reconvene at two o'clock okay.

22 Have a good lunch.

23 Don't discuss the case.

24 MR. LaRUSSO: Thank you, your Honor.

25 (The jury left the courtroom.)

1 THE COURT: You may step down.

2 If you would all be seated.

3 So Mr. LaRusso, just to go back to your point
4 earlier. I looked the at indictment. And you all
5 obviously know a lot more about the case better than I do
6 in details.

7 But the government allegations as to what
8 Mr. Kenner and Mr. Constantine did with relation to what
9 they did with the Eufora investments, what their
10 quote/unquote theory of the case is, to me could not be
11 clearer when you read paragraphs 12 and 14.

12 I mean it's not complicated. It's stated very
13 clearly what they're alleging happened. They're alleging
14 that money was taken from the Eufora money and diverted
15 for unauthorized purposes for your client's benefit and
16 Mr. Kenner's benefit. They further allege that you, your
17 client and Mr. Kenner convinced John Doe number 11.

18 Who is who is John Doe number 11?

19 MR. MISKIEWICZ: Nicholas Privitello

20 THE COURT: To invest money in Eufora and then
21 diverted his money for unauthorized purposes and disavowed
22 his ownership interest in Eufora.

23 There is nothing unclear about that. There is
24 nothing mysterious about it. There is nothing complicated
25 about it.

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1 So when you stand up here and say to me, I don't
2 know what they're going to try to say with respect to
3 Eufora. That is what the indictment says. That is that
4 I'm going to have the government committed to.

5 So I just want there to be no question that I
6 understand there was another aspect of the case, that
7 there was an earlier indictment. And the government's
8 reference in the -- and you prepared the defendant against
9 that aspect of the case. But they're not pursuing that.
10 But to the extent that you're arguing there was an
11 entirely new theory of the case, I don't know what I'm
12 defending any more. You know, I don't know what could be
13 clearer. What more do you want than what is in those
14 paragraphs?

15 They took money. The argument is that
16 Mr. Constantine took money that was supposed to be for
17 Eufora and used it for his personal benefit. And
18 specifically took money from Mr. Privitello.

19 MR. LaRUSSO: And if the Court remembers when
20 we were confronted with this general allegation of fraud,
21 I asked the Court for an opportunity to get more
22 specificity. Because the original indictment, those three
23 paragraphs were clear. And I don't think they really
24 changed, judge, other than to give the government the
25 opportunity to do what they have been doing here.

1 First paragraph is \$700,000, what we talked
2 about. The second one is \$725,000 that the accused my
3 client of. And the one is Mr. Privitello, \$200,000.

4 I know what the end result is. But what we were
5 doing was asking the evidence to support the charges. And
6 that is what changed. That is our point, judge. And I'm
7 sorry for belaboring the point, I guess I didn't make it
8 clear enough.

9 THE COURT: No, I understand. The background of
10 where the investment was. But the government is not
11 trying to prove that the initial transfer to the Eufora
12 fund was fraudulent. They're not trying to prove that
13 because the money was co-mingled and they don't want to
14 prove that.

15 You know, to me that's a win for your client.
16 That is a win for your client. That is another aspect of
17 the case they're not seeking to argue. He didn't commit
18 any crime. That is a good thing, not a bad thing.

19 The rest of the case is still clear. You
20 haven't been surprised. It's not complicated. Did he or
21 did he not take money from Eufora for his own purposes?
22 That's not complicated. That's not a surprise. That's
23 what the case is about. Okay?

24 MR. LaRUSSO: The only point is -- I don't want
25 to belabor the point. I know the Court is --

1 THE COURT: You're not belaboring it. I'm
2 belaboring it at this point.

3 MR. LaRUSSO: Thank you, judge.

4 The point is, is that the government had
5 originally said that the basis of the facts that supported
6 them emanated from the 2002 diversion. Now they're saying
7 the \$700,000 was stolen in 2008 and 9. And I'm going,
8 okay, where is the theft? Where are the facts? I asked
9 you for some help here with regard to understanding where
10 we're going, what we're defending. And I still don't
11 know.

12 THE COURT: Okay. But again part of your case
13 is to try to show that the \$700,000 in 2008 is not a
14 diversion. It involves going back to what happened in
15 2000, you know, whatever year it was, 2002, 2003. That is
16 fine. You can do that, to try to show that's -- but it's
17 not -- that is the fraud. You're free to try to show that
18 couldn't be a fraud because the money came from some
19 legitimate source, you know, years earlier. That is fine.
20 That is up to you. But I don't, I don't want you to be
21 suggesting on the record there is some surprise about what
22 is in the indictment, or it's, you know, a different
23 theory. Okay?

24 But I think we both belabored this.

25 So all right. So have a good lunch and I'll see

1 you at two o'clock.

2 MR. HALEY: Judge, I'm told Mr. Mascarella will
3 be testifying this afternoon. We have yet to receive the
4 Northern Trust records, I'm told.

5 MR. MISKIEWICZ: Mr. Mascarella won't be
6 testifying

7 (A luncheon recess was taken.)

8 (Continued on the following page.)

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1 A F T E R N O O N S E S S I O N

2 THE COURT: Okay. Are you ready?

3 MR. LA RUSSO: Thank you, your Honor.

4 THE COURT: Okay. Let's bring in the jury.

5 THE CLERK: All rise.

6 (Whereupon, the jury entered the courtroom.)

7 THE COURT: Everyone be seated. Go ahead,
8 Mr. La Russo.

9 MR. LA RUSSO: Thank you, your Honor.

10

11 CROSS-EXAMINATION (Continued)

12 BY MR. LA RUSSO:

13 Q. Mr. Juneau, didn't my client, Mr. Constantine,
14 actually present a settlement agreement to your attorney
15 for the full amount of your investment?

16 A. I don't know if he presented it to my lawyer, but I
17 remember dealing with, personally with my financial
18 advisor.

19 Q. And didn't Mr. Constantine actually complain to you
20 about your lawyer delaying the signing of that agreement
21 for the full amount?

22 MR. MISKIEWICZ: Objection.

23 THE COURT: Overruled.

24 A. So I think there was something like this, but I never
25 personally had my lawyer involved. That's something from

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1 what I remember that I was dealing with outside of his
2 services.

3 Q. And actually you dealt directly with Mr. Constantine
4 at one point. Isn't that a fact?

5 A. Yes, we did. We talked on the phone.

6 Q. In addition to talking on the phone, you also
7 exchanged e-mails during this time period, correct?

8 A. It's highly possible, yeah.

9 Q. Let me show you what's been marked for identification
10 as Defendant's Exhibit C-2. Would you take a look at
11 that, please, Mr. Juneau. (Handing.)

12 You can take your time, I know there's a couple
13 of pages, I just want to make sure that you've had an
14 opportunity to review all of it. (Pause.)

15 Have you had an opportunity to review it
16 sufficiently to be able to tell us that that's an e-mail
17 exchange between you and Mr. Constantine during the
18 settlement discussions?

19 A. Yes.

20 Q. That is your e-mail address and what you knew to be
21 Mr. Constantine's, correct?

22 A. Yes.

23 MR. LA RUSSO: Your Honor, may ask that C-2 be
24 received testified.

25 THE COURT: Any objection?

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1 MR. LA RUSSO: Judge, I don't need all of it.

2 MR. MISKIEWICZ: Objection.

3 THE COURT: Overruled. Any objection?

4 MR. HALEY: No, sir.

5 THE COURT: C-2 is admitted.

6 MR. LA RUSSO: Your Honor, it's three pages
7 long, I'll just read the first three paragraphs which take
8 us through the first page and the top of the second.

9 THE COURT: Go ahead.

10 Q. You see that, Mr. Juneau.

11 A. Yes.

12 Q. Tommy -- that's you -- correct, Mr. Juneau,
13 Mr. Constantine -- Tommy?

14 A. Yes.

15 Q. I just heard from Michael Meeks.

16 That's your lawyer?

17 A. Yes.

18 Q. That you will not authorize your attorney to send the
19 settlement agreement to him and unless you get to talk to
20 me first. I am really wondering why you feel that we need
21 to spend more time discussing this issue between you and I
22 at this point. Joe -- and this is Mr. Constantine
23 responding to you, correct?

24 A. It looks like it.

25 Q. Okay. The reason that you and I need to discuss this

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1 as opposed to sending paper back and forth between the
2 attorneys, is -- A -- is because, A, the primary reason
3 for these issues arising between us in the first place is
4 your lack of communication. In brackets, (for example,
5 your attorney has had the settlement agreement which you
6 are asking me to now send for weeks) end brackets; B, you
7 have been taking blind legal action against me without so
8 much as making a single phone call to me during the entire
9 tenure of your investments with my related entities; C,
10 you have been grossly ill-advised by your attorneys and
11 their so-called experts, as well as by a couple of
12 disgruntled former colleagues of Phil's, who know
13 absolutely nothing about me or my business. And; D, you
14 have been presumably spending hundreds of thousands of
15 dollars of your own money on an attorney, who in my
16 opinion and based on his actions with respect to handling
17 this settlement offer which was presented weeks ago is not
18 serving your best interest. D, and continue going down
19 the path and take action which requires me to spend
20 similar large amounts of money on unnecessary legal
21 action.

22 And then there's a break. New paragraph.

23 After our phone discussion from last
24 Wednesday -- that's you speaking, is that correct,
25 Mr. Juneau, assuming?

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1 A. Yeah.

2 THE COURT: Can you move up the document up.

3 MR. LA RUSSO: I apologize.

4 Q. The last paragraph, correct?

5 After our phone discussion from last Wednesday,
6 we both agreed that I would look over your settlement
7 proposal with my attorney and that we would get back to
8 you ASAP, which I believe we did. You also told me that
9 you have just found out for the first time that I wish to
10 get out of the Avalon deal and that you'd have paid me
11 back right away if you would have known that before. I'll
12 just finish the paragraph. Just to you know, this would
13 have never happened --

14 THE COURT: Mr. La Russo, we can't see it.

15 MR. LA RUSSO: That's me again, I apologize. I
16 got too caught up in reading it, I apologize. I'll go
17 back just a little bit to the page on the bottom so that
18 you can understand it. Last sentence:

19 You also told me that you have just found out
20 for the first time that I wish to get out of the Avalon
21 deal and that you would have paid me -- I'm doing it
22 again -- the Avalon deal and that you would have paid me
23 back right away if you would have known that before. Just
24 so you know, this would have never happened if Phil Kenner
25 would have told you. So since he was the one representing

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1 me and I had mentioned it to him many times since my
2 retirement from the NHL.

3 I read it correct that time?

4 A. Yeah.

5 Q. Now, this agreement that we're talking about at this
6 point, the original agreement was for the full amount of
7 your investment, correct?

8 A. No.

9 Q. Correct?

10 A. Yes.

11 Q. Now, it's your impression, I believe from your
12 testimony, that you had invested 500,000 in the Avalon Air
13 Park project; is that correct?

14 A. Yep.

15 Q. In fact didn't you invested \$550,000?

16 A. I thought it was 500, it might have been more.

17 But --

18 Q. In fact you testified that you thought like today
19 that it was a half a million dollars?

20 A. Right.

21 Q. And the e-mail that we were alluding to earlier May
22 18th, 2005 with Mr. Kenner, you also mentioned 500,000; is
23 that correct?

24 A. Yep.

25 Q. Do you think back to these discussions, do you

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1 remember Mr. Constantine being the person that brought to
2 your attention that the correct amount of your investment
3 was 550 thousand and not 500, isn't that correct? If you
4 think back to those discussions.

5 A. If I remember him telling me that it was 550?

6 Q. Yes.

7 A. I don't remember, but it's possible that he did.

8 Q. Now, Mr. Juneau --

9 MR. LA RUSSO: Judge, bear with me a moment. I
10 thought that I had this premarked. May I approach the
11 witness, Judge?

12 Q. Mr. Juneau, would you take a look at defense C-21 for
13 identification. (Handing.)

14 Can you recognize that? I know it's a copy.
15 Let me ask you, does it like your signature on that?

16 A. It does, that's probably --

17 Q. Does it now refresh your recollection that on July
18 28, 2003 you sent \$550,000 to Constantine Management
19 Group?

20 A. I did, yeah.

21 Q. I'm sorry, 550?

22 A. 550.

23 Q. Now you testify today, you now look at this and know
24 you invested \$550,000?

25 A. Yes.

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1 Q. And it was my client that actually brought that to
2 your attention?

3 (Pause.)

4 THE COURT: Did you answer the last question? I
5 didn't hear the last answer.

6 A. About \$550,000.

7 THE COURT: Perry, could you read the last
8 question.

9 (Question read by the court reporter.)

10 A. Well, like I said it's possible that he did. I don't
11 remember but it's possible that he did. In those
12 conversations for the settlement, I guess.

13 Q. Now, you ultimately accepted the airplane, correct,
14 to go with the \$550,000 investment, right?

15 A. Yes.

16 Q. And do you remember actually asking that the airplane
17 that you were seeking to accept in lieu of the investment
18 be appraised?

19 A. Yes.

20 Q. And in fact my client provided with an appraisal for
21 that plane; is that right?

22 A. Yes, he did provide some documents.

23 Q. Do you remember how much the plane was appraised for?

24 A. It was in, you know, around the same value, little
25 lower from the numbers we got from, if I remember right.

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1 Q. And the numbers you mean the investment that you made
2 in Eufora?

3 A. I guess the 550.

4 Q. Okay. Who paid for the appraisal?

5 A. What's that?

6 Q. Who paid for the appraisal? Mr. Constantine?

7 A. I don't think I paid to it.

8 Q. Let me ask you, do you remember or was there any
9 discussions as to who paid for the plane that you got and
10 would paid for the appraisal?

11 A. I believe we, we asked, you know, to prove the plane
12 and then after that, ended up making that settlement.

13 Q. But the monies that were used to pay for the
14 appraisal and for the plane that you ultimately accepted
15 were you aware that it came from a fund called the Global
16 Settlement Fund?

17 A. No.

18 Q. Would it be fair to say at the end of the day you
19 reached the settlement with Mr. Constantine with respect
20 to the Avalon investment that he was satisfied with?

21 A. Well, considering the situation yeah, obviously if I
22 signed this it appears that I was satisfied, I just wanted
23 to move on, like I said.

24 Q. How many years after you accepted the airplane did
25 you sell it, I think you mentioned that early this

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1 morning?

2 A. I put it on the market for the price that it was
3 supposed to be worth and never got a buyer.

4 Q. What market did you do that with?

5 A. We brought it to a place in Maine where there was a
6 company there flying this kind of plane, dealing also like
7 selling them, buying these kind of planes.

8 Q. Did you hire a broker?

9 A. Yep.

10 Q. Did you have it appraised again?

11 A. I'm not sure. I, I'm not sure if it was a
12 professional appraisal or if it's -- if it was the broker
13 just advising me that the price actually had been lower
14 than what we were asking.

15 Q. Do you have any idea today what that plane is worth?

16 A. No.

17 Q. What was the agreed upon amount in the settlement
18 agreement itself? Do you remember?

19 A. The amount?

20 MR. LA RUSSO: I apologize.

21 Q. You don't know the amount that was in the settlement
22 agreement that you finally signed?

23 A. No. The only thing about the settlement that I know
24 of is that I ended up with a plane.

25 MR. LA RUSSO: Your Honor, I have the other copy

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1 of the settlement agreement, it's a little difficult to
2 read. I'm just wondering if we have a copy of what we
3 were discussing earlier.

4 THE COURT: I thought I handed that back.

5 MR. LA RUSSO: Bear with me one moment, Judge.

6 MR. MISKIEWICZ: I have it.

7 THE COURT: He's got it, Mr. La Russo.

8 MR. LA RUSSO: Thank you very much. May I
9 approach the witness?

10 Q. Take a look at this document, particularly enough of
11 the paragraphs that you can understand what the purpose of
12 that document and its contents and look at the signature
13 page on the back. (Hanging.) (Pause.)

14 Have you had a chance to take a look at it?

15 A. Yeah.

16 Q. Do you recognize the signatures on the back of it?

17 A. Yes.

18 Q. Would it be fair to say that it that's a copy of the
19 settlement agreement that you reached in regard to your
20 investment in the Avalon Park?

21 A. Yes.

22 Q. Thank you. Discuss so the record is clear, this is
23 date July 27, 2009; is that correct?

24 A. Yes.

25 Q. Thank you.

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1 MR. LA RUSSO: Your Honor, with your permission,
2 I'm just going to read the one paragraph we talked about.

3 THE COURT: Are you going to offer it?

4 MR. LA RUSSO: I offer it into evidence at this
5 time and I'll be reading the one paragraph we discussed.

6 THE COURT: And subject to the discussion had
7 earlier today, just the portion of it will be marked,
8 correct.

9 MR. LA RUSSO: Yes, your Honor at this point.

10 MR. MISKIEWICZ: No objection.

11 THE COURT: Any objection, Mr. Haley.

12 MR. HALEY: No, sir.

13 THE COURT: What number is it?

14 MR. LA RUSSO: I just wanted to show
15 Mr. Miskiewicz the portion that I'm reading.

16 THE COURT: What's the number?

17 MR. LA RUSSO: 748, your Honor.

18 THE COURT: 748, a portion of 748 that we
19 discussed earlier today is admitted and will be read.

20 (Defendant Constantine's Exhibit 748 in
21 evidence.)

22 MR. LA RUSSO: Your Honor, on page 2 looks like
23 paragraph I, it says payment. By signing below
24 Constantine acknowledges and agrees that through AZ Falcon
25 Partners LLC he owns and has in his possession one 1980

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1 Cessna 414 A airplane, serial number 0532, free and clear
2 of all liens and incumbrances, the Cessna, which is
3 available to sell, transfer and convey to Juneau or an
4 entity designated by Juneau in accordance with this
5 agreement. The parties agree that the Cessna has a value
6 of at least \$437,000.

7 Q. When you -- you testified I believe that you've
8 spoken to the FBI on a number of occasion; is that
9 correct?

10 A. Yeah.

11 Q. Do you remember speaking to the FBI by telephone on
12 some of those occasions?

13 A. Yes. Yeah, I do. Talked about the settlement.

14 Q. And would it be fair to say that in discussing the
15 settlement agreement with the FBI as you said here today,
16 that the Cessna 414 airplane in your estimation was worth
17 about \$500,000.

18 Do you remember saying that to the FBI?

19 A. Well, I mean what I said in that this is how we
20 settled, I mean, we accepted that this was the same
21 ballpark, the same you know value, and made the deal.

22 Q. And would it be also correct in those discussions you
23 remember telling them that the amount that you sold it for
24 was the approximate amount that you invested in the hangar
25 at Avalon Air Park, approximate amount?

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1 A. That I sold?

2 Q. That's what you told the FBI. Do you remember
3 telling them that?

4 A. No. Because I didn't sell it.

5 Q. I'm sorry, the value the airplane was the approximate
6 amount what you have invested in the hangar in Avalon Air
7 Park?

8 A. Yeah. What happened is that one day the pilot using
9 the plane slipped on the runway and crashed it and that
10 was the end of it.

11 Q. When did that occur?

12 A. I with say 2012, maybe something like that.

13 Q. It was many years after the settlement agreement?

14 A. A few years after, because, well, if you want to hear
15 the story?

16 THE COURT: No. No.

17 THE WITNESS: It's a very interesting one.

18 Q. And that kind of damage to the airplane, that reduced
19 the value substantially on the plane; is that correct?

20 A. We declared the plane totaled, I guess.

21 Q. In that case it was totaled?

22 A. It was, yeah.

23 Q. Now, how would you ultimately characterize your
24 dealings with Mr. Constantine with regard to your Avalon
25 investment?

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1 A. Well, again, one meeting and conversations with the
2 settlement at the end, that's pretty much all that I can
3 say.

4 Q. And you got what you were hoping to get?

5 A. He will, yeah, I got out of the Avalon.

6 Q. And you testified that you had actually experienced
7 delays communicating with Mr. Kenner, correct, do you
8 remember testifying to that, Mr. Kenner, were you trying
9 to talk to him about your investments during that period
10 of time, there was a delay?

11 A. Yeah, that's why I did hire Phil Kenner.

12 Q. You didn't have that kind of delay with
13 Mr. Constantine when you were negotiating the settlement,
14 did you?

15 A. No, to be honest, once we moved on on this, I mean
16 from my perspective it had happened quickly.

17 Q. And would you agree he was straightforward and
18 forthright with you in reaching the settlement?

19 MR. MISKIEWICZ: Objection.

20 THE COURT: Overruled.

21 A. Well, again, when we both decided on moving ahead
22 with this, you know, accepting that the plane would be
23 went out, it went pretty quick.

24 Q. And would you say at that point it went
25 straightforward and forthright, Mr. Constantine's dealings

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1 with you.

2 A. I would think so.

3 Q. You remember as part of settlement agreement actually
4 writing a letter to that effect, do you remember writing a
5 personal letter?

6 A. I remember there was something, I don't know if it
7 was drafted or who wrote it, but I remember there was
8 something.

9 MR. LA RUSSO: I have the document.

10 Q. Mr. Juneau, let me show you C-3 for identification,
11 please. (Handing.)

12 Do you recognize that document?

13 A. I read it.

14 Q. That's your signature on it?

15 A. Yes, it is.

16 Q. And is that the personal letter that you signed in
17 regards to the settlement agreement?

18 A. It looks like it.

19 Q. Okay.

20 MR. LA RUSSO: Your Honor, may ask that
21 Defendant's Exhibit C-3 be received in evidence.

22 THE COURT: Any objection?

23 MR. MISKIEWICZ: Appears like irrelevant.

24 THE COURT: Overruled. Any objection to it.

25 MR. HALEY: No, sir. Thank you.

Juneau - Cross/La Russo

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1 THE COURT: C-3 is admitted.

2 (Defendant Constantine's Exhibit C-3 in
3 evidence.)

4 Q. I hope to be more successful in reading this than
5 delaying it.

6 MR. LA RUSSO: With your permission, your Honor.

7 THE COURT: Sure.

8 Q. Saint Raymond PQ, Mr. Juneau, do you know what PQ is?

9 A. Province of Quebec.

10 Q. Monday, July 27, 2009, REF R-E-F: Settlement between
11 Joe Juneau and Tommy Constantine. In the first
12 opportunity for Mr. Constantine and I, to directly discuss
13 my investment with him, Mr. Constantine agreed to refund
14 my entire investment. Accordingly, we have agreed to an
15 amicable resolution of the issues raised in my lawsuit
16 against him. I harbor no negative feelings towards
17 Mr. Constantine, or his companies, or how he ultimately
18 handled my investment, and I do not condone nor did I
19 participate in the attacks brought upon Mr. Constantine in
20 the media.

21 And then there's a signature, and the name
22 Joe Juneau.

23 Just a little aside here, you've heard some
24 discussions about lines of credit. Before 2009, did you
25 ever have any discussions or e-mail communications with

Juneau - Cross/La Russo

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1 Mr. Constantine about the lines of credit that you
2 testified to here?

3 A. I don't think so.

4 Q. Your discussions were with Mr. Kenner?

5 A. Yeah.

6 Q. Now, in addition to the settlement that we were
7 talking about for sometime, you also invested in a number
8 of other companies through Mr. Kenner, I think you
9 testified to some of them; is that correct?

10 A. Yes.

11 Q. And as a matter of fact the e-mail of May 18th, 2005,
12 lists quite a few of them, but one with Escher for a
13 hundred thousand?

14 A. Um-hmm.

15 Q. BSD for 200,000?

16 A. Yes.

17 Q. A company called Teknik, T-E-K-N-I-K?

18 A. Yeah.

19 Q. What was your investment in that? Over a million
20 dollar; is that correct?

21 A. Yeah. It was I believe a little bit over 1.5
22 million.

23 Q. You also invested in a company called Impact?

24 A. Yes.

25 Q. \$100,000, I believe?

Juneau - Cross/La Russo

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1 A. Yes.

2 Q. You invested \$500,000 in Mr. Jowdy's Diamonte del
3 Mar, correct?

4 A. Yes.

5 (Continued on next page.)

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JUNEAU - CROSS - LaRUSSO

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1 CONTINUED CROSS EXAMINATION

2 BY MR. LaRUSSO.

3 Q And there were others. All those investments you made
4 through Mr. Kenner, is that correct?

5 A Yes.

6 Q Would it be fair to say that it was only Mr. Constantine
7 who made good on the investments that you had with him?

8 A Well, there's also the Mexican deal that ended up getting
9 some kind of a settlement as well. So it would be two -- two
10 people, two persons that we ended up dealing with to make an
11 agreement.

12 Q But in spite of all of the others --

13 A Yes.

14 Q -- you say Mr. Constantine was the only one that made
15 good on the investments?

16 A He's the only one who what?

17 Q Made good on the investments you made?

18 A Oh, there was no profits. But I got -- you know, I
19 got...

20 Q There was no profit?

21 A Correct.

22 Q Your investments were such that you were not guaranteed.
23 I believe Mr. Haley brought that out. You were not guaranteed
24 any return on the investment such as interest or dividends or
25 anything like that. There were no promise or guarantee made,

JUNEAU - CROSS - LaRUSSO

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1 is that correct?

2 A I mean, when all of this stuff is presented, it's like
3 this is obviously going to be a good move, a good thing. But
4 at the end, there was no profits.

5 Q But you got the money back that you invested?

6 A I did, yes.

7 Q I don't know, let me just phrase it this way: Did you
8 invest with a man by the name of Mr. Jowdy \$500,000?

9 A Yes.

10 Q That was through Mr. Kenner, again, is that correct?

11 A Yes, it was.

12 Q Do you remember when you made that investment with
13 Mr. Jowdy?

14 A My guess would be 2002, 2003.

15 Q The investment, did you send the money by wire transfer?

16 A I think so, but I'm not too sure.

17 Q It's a long time ago, 2002. Your recollection is you
18 think it was a wire transfer, correct?

19 A Yes.

20 Q Do you remember whether you did it by single wire or two
21 separate wires or more?

22 A No, I don't remember.

23 Q Let me show you what's been marked --

24 (Handing to counsel.)

25 MR. LaRUSSO: One moment, Your Honor. I want to

JUNEAU - CROSS - LaRUSSO

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1 make sure that it's properly marked.

2 Q I am going to show you what has only been marked for
3 identification as C-7 and C-8. Will you take a look at those,
4 please.

5 (Handing.)

6 Did you have a chance to look at those?

7 A Yes.

8 Q Does it refresh your recollection as to how you made your
9 investments with Mr. Dowdy in the Mexican project?

10 A I don't remember. I mean, if this is how it happened.

11 Q Does it refresh your recollection you sent two separate
12 wires; \$250,000¹ on August 15, 2002, and the other on
13 December 27, 2002?

14 MR. MISKIEWICZ: Objection.

15 THE COURT: Overruled.

16 A That is what I see here. But my guess, it was done in
17 one piece.

18 Q Looking at these, your recollection is you thought it was
19 one but it could have been two?

20 A Yes. I don't know if it ended up being one instead of
21 two.

22 Q Do you remember what account the money was sent to?

23 A (No audible response.)

24 Q You're shaking your head?

25 A No, I don't.

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1 Q I apologize for saying that. Sometimes he can't get the
2 shaking of the head.

3 Looking at those documents, does it refresh your
4 recollection as to what account it was deposited into?

5 A Well, I can see now by this. I could have never told you
6 before seeing this that it went to these places.

7 Q Have you ever heard of a company called Baja Development?

8 A Yes, I did.

9 Q Whose company is that?

10 A It was something linked to Ken Dowdy. I mean, that's
11 pretty much the only information that I got out of it.

12 Q And your investment?

13 A Excuse me?

14 Q And connected to your investment in the project?

15 A Yes.

16 Q Did you get a promissory note for those investments?

17 A I could have.

18 Q You may have or may not have?

19 A Yes.

20 Q If I show you a document marked C-4. Take a look at it.

21 (Hanging.)

22 Tell me after you're done looking at that, does that
23 refresh your recollection that in fact you received a
24 promissory note for \$500,000 in Mr. Jowdy's company.

25 A Is my name on this?

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1 Q The document has only one page to it.

2 A Okay.

3 Q And I must ask you to take a look at it.

4 A Yes.

5 MR. LaRUSSO: If I may, Your Honor, to save some
6 time?

7 THE COURT: Yes.

8 Q Does that help refresh your recollection you got a
9 promissory note from Mr. Jowdy for the \$500,000 that you
10 invested in the Mexican project?

11 A I don't remember this document, to be honest.

12 Q But would it be fair to say you do recall getting a
13 promissory note for that investment?

14 A This is a -- no, I don't remember getting this document.

15 Q Well, when you invested the money --

16 A Yes.

17 Q -- did you invest it as a loan?

18 A It's a good question.

19 Q That's why I asked it.

20 A For me, it was investing in some land development
21 somewhere in Mexico.

22 Q Well, let me ask you: You know what a promissory note
23 is, right?

24 A Yeah. I've never seen this before.

25 Q I'm not asking you since you don't recognize the

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1 document. I'm asking you: You know what a promissory note
2 is?

3 A What?

4 Q Someone promises to pay you money.

5 A Okay.

6 Q It indicates that you lent the money; and that person
7 that is borrowing it from you agrees to pay it back, correct?

8 A Yes.

9 Q If your money was invested in the loan, you would have
10 gotten a promissory note to record that transaction, is that
11 right?

12 A I guess.

13 Q Would you agree with me?

14 A Yes.

15 Q I'm not good with finance either. So I'm going to keep
16 it as simple as I can.

17 A Good.

18 Q Okay. The promissory note -- if you're familiar with it
19 or not, just let me know and I'll move open -- it doesn't
20 state what the borrower can do with the loan proceeds,
21 correct?

22 MR. MISKIEWICZ: Objection.

23 THE COURT: Sustained.

24 Q Well, in your recollection of the events, when you lent
25 the money to Mr. Jowdy, were you lending it as a loan or were

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1 you lending it as an investment?

2 MR. MISKIEWICZ: Objection.

3 THE COURT: I think he answered this once already,
4 but I'll allow him to answer one more time.

5 Can you answer that again?

6 THE WITNESS: I don't know if it was a loan or -- I
7 just know that I was going to lend for some project in Mexico.
8 So in the form of a loan or in the form of whatever it was.

9 Q If it was a loan, that would be a promise by Mr. Jowdy to
10 pay you back the money, correct?

11 A Correct.

12 Q Mr. Jowdy could do what he wants with the loan proceeds
13 because his only obligation to you is just to repay the loan.

14 MR. MISKIEWICZ: Objection.

15 THE COURT: Sustained.

16 Q Do you have any recollection of a document that can help
17 refresh your recollection whether the \$250,000 was a loan or
18 an investment? Do you recall any?

19 A No.

20 Q That may be inappropriate. Let me tell you, I'm going to
21 show you a document marked for identification as C-5. I'll
22 ask you to take a look at the signature pages on the back,
23 whatever portion of it you need to familiarize yourself with
24 this, and see if that refreshes your recollection that your
25 original investment of \$500,000 was a loan and that it was

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1 subsequently converted too ownership.

2 (Witness reviews the document.)

3 Have you had a chance to look through that?

4 A Yes.

5 Q Do you recognize the document?

6 A Not really, but I might have seen it before.

7 Q Do you recognize any writing on it?

8 A All of this is not my handwriting.

9 MR. LaRUSSO: The first page, Judge, there's the
10 word written "Joe Juneau." He says that's not his
11 handwriting.

12 Q Turning to page 9 there's handwriting. Do you recognize
13 that?

14 A I don't believe this is my handwriting either.

15 Q Continue.

16 You're not sure, is that correct?

17 A Well, one of my daughter's names, I always spell it with
18 the accent. And this is not how I write my Js.

19 MR. LaRUSSO: Now we're on page 10, Your Honor.

20 THE WITNESS: This is not how I write my name. And
21 this looks like my signature.

22 Q Just so the record is clear, when you say "this is not
23 how I write my name, you're referring to the printed "Joe
24 Juneau," correct?

25 A Yes.

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1 Q Above that is the signature, and that looks like your
2 signature, is that correct?

3 A Yes.

4 Q This document is also signed by?

5 A It's right there. I can't tell.

6 Q This is titled a Baja Management LLC Subscription and
7 Membership Agreement, is that correct?

8 A Yes.

9 MR. LaRUSSO: Your Honor, may I offer Exhibit D at
10 this time?

11 MR. MISKIEWICZ: May I have voir dire?

12 THE COURT: Yes.

13 VOIR DIRE EXAMINATION

14 BY MR. MISKIEWICZ:

15 Q Mr. Juneau, looking at the last page, have you ever seen
16 this document before, the one that has what appears to be your
17 signature?

18 THE COURT: You said "last page." Is that a
19 different page than he was just looking at or the same page?

20 MR. MISKIEWICZ: Same page he was looking at. This
21 is page 10.

22 A No, I don't remember.

23 Q Just speak up for the jury.

24 A I said no, I don't remember.

25 Q Have you had a chance to review this document just now to

JUNEAU-VOIR DIRE-MISKIEWICZ

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1 familiarize yourself with what it purports to be, kind of what
2 that agreement is all about?

3 A Yeah. I was actually kind of getting interested in
4 reading it. Just...

5 Q Why do you find it interesting reading?

6 A Well, because I see that it says that I purchased Class B
7 interest in becoming a Class B member of Baja Management.
8 So...

9 Q Did you ever know that?

10 A I can't -- I can't say that I knew that, no.

11 Q Except for when Mr. LaRusso just showed you this
12 document, did you ever see -- had you ever seen this document
13 before?

14 A I don't think so, but it's possible. I don't believe so.

15 Q What, if anything, does that document have to do with
16 Hawaii? Do you know?

17 A I don't think that it does.

18 Q Do you know where that document has been -- is it an
19 original or a copy? Can you tell?

20 A Well, I think it looks like a copy. Yes. I would guess
21 it's -- I would say it's a copy.

22 Q Do you know where that last page -- do you know if that
23 last page was connected to the remaining pages -- assuming you
24 did sign it. Assuming that is your signature. Do you know if
25 that page 10 was connected to the rest of the pages in that

JUNEAU-VOIR DIRE-MISKIEWICZ

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1 document, if you signed it?

2 A Well --

3 Q Do you know?

4 A Well, the page says Diamanté Del Mar LLC and Baja
5 Management LLC and the name of Ken Jowdy.

6 Q My question, Mr. Juneau, do you know if you signed that
7 document, or if you signed that page 10, do you know whether
8 or not you signed it being able to read everything else that
9 preceded that signature?

10 A I don't understand what you're asking me. But looking at
11 this with my signature, I can't tell. I only see this page
12 alone.

13 Q As you sit here today, do you have an independent
14 recollection of ever signing a document that gave you whatever
15 this document claims to give you by way of agreement? Do you
16 have a recollection of doing that?

17 A I don't.

18 Q Okay. The last signature there says -- there's some
19 printed or handwritten indication of a Mr. Jowdy. Both or is
20 it just printed?

21 A Ken Jowdy's name is written by the computer and there's
22 his signature in two places.

23 Q Would you even know what Mr. Jowdy's signature looks
24 like?

25 A No, not at all.

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1 MR. MISKIEWICZ: Objection.

2 THE COURT: Any objection, Mr. Haley?

3 MR. HALEY: No objection.

4 THE COURT: The objection's overruled. C-5 is
5 admitted.

6 (So marked as Defendant Exhibit C-5 in evidence.)

7 CONTINUED CROSS EXAMINATION

8 BY MR. LaRUSSO:

9 Q That document that you told us about your recollection of
10 it, is for \$500,000, is that correct?

11 A Yes.

12 Q It's a \$500,000 interest in, it says, Baja Management, is
13 that right?

14 A As a member of Baja Management LLC.

15 Q You invested \$500,000, there's no question in your mind,
16 through Mr. Kenner for a project that was being managed or run
17 by Mr. Jowdy, is that correct?

18 A Correct.

19 Q That's what this is, right?

20 A Yes.

21 Q This document also gives you an equity interest in this
22 company that the person, that signature appears there,
23 Mr. Jowdy, is giving to you?

24 A Yes, it does.

25 Q And a equity interest is an ownership interest, is that

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1 correct?

2 A Correct.

3 Q As opposed to what we talked about earlier, a loan.

4 A Yes.

5 Q So looking at this document, would you agree with me that
6 your initial investment in '02 was for a loan and, according
7 to this document, are converted to ownership?

8 MR. MISKIEWICZ: Objection.

9 THE COURT: Sustained. The document's in evidence.
10 You've already had him testify as to what his knowledge is.

11 Q But just to be clear, you told us it was no more than
12 \$500,000, is that correct, in this?

13 A That was my understanding. It was half a million.

14 Q I don't have any other documents or I'd give it to you.

15 It was \$500,000, correct?

16 A Yes.

17 Q Do you know -- did you ever receive the shares in
18 Diamanté Del Mar?

19 A I don't think so.

20 Q Do you know if a subscription membership agreement, which
21 is Defendant Exhibit C-5, takes the place of the shares and
22 gives you the ownership interest? Do you know that?

23 A No, I don't.

24 Q Do you know the names Jason Wooley?

25 A Yes.

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1 Q And Dimitri Khristich?

2 A Yes.

3 Q Who are they?

4 A Former teammates.

5 Q Which team? I know you played on a lot of teams.

6 A Jason Wooley, first played with him at the 1992 Olympics.

7 And I think it was in 1994. I also played with him as part of

8 the '94 or '95 Washington Capitals. And Dimitri Khristich, I

9 played with him with the Washington Capitals.

10 Q Do you know if both Mr. Jason Wooley and Dimitri

11 Khristich also invested in Mr. Jowdy's project?

12 A I can't say.

13 Q Now, you mentioned a little while ago that Mr. Jowdy made

14 good, I believe is the word you said, on your investment?

15 MR. MISKIEWICZ: Objection.

16 THE COURT: Just ask the question.

17 Q Did Mr. Jowdy make good on your investment?

18 A I couldn't tell.

19 Q Well, you testified earlier when we were talking about

20 whether you got the return on the investment that you began

21 talking about Mr. Jowdy, right?

22 A Yes.

23 Q All I'm asking you, did you -- you explain how he made

24 good, if he did, on the investment that you made of \$500,000

25 in Diamanté Del Mar?

JUNEAU - CROSS - LaRUSSO

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1 A All I can say is that I ended up getting a percentage of
2 a development going on maybe -- maybe it's the business
3 eventually going on near Los Cabos. But I've never seen the
4 development so I can't say that it was good or bad.

5 Q Let me just clarify so I'm clear. Your investment in
6 Diamanté Del Mar, that was a project in Northern Baja,
7 California, is that correct?

8 A Yes.

9 Q That particular project, if you know, built a runway and
10 nothing more.

11 A Well, I mean, I went there once with Phil Kenner. And
12 that's pretty much all I saw, was a runway and shoe sticks
13 marking different spots.

14 Q What happened to the project in Diamanté Del Mar?

15 A It fell apart, I guess. I never found out really what
16 happened.

17 Q You mentioned another project. Would that be Cabo St.
18 Lucas?

19 A Yes, that's it.

20 Q Where is that located?

21 A It's in California --

22 Q In Southern Baja, is that fair?

23 A Yes.

24 Q So you can distinguish between the two projects. Delmar
25 is in the north, which went nowhere, and Cabo is in the South,

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1 is that correct?

2 A Yes.

3 Q Your investment in Del Mar, you said that you got some
4 interest in the southern project from Mr. Jowdy, is that
5 correct?

6 A Yes, it is.

7 Q Can you tell the ladies and gentlemen of the jury what
8 that is, if you recall it?

9 A Well, it's a percentage of this project. I'm not sure
10 what percentage it is. But that was the agreement that we
11 made with Ken Jowdy.

12 Q Would it be fair to say that the reason you came to that
13 agreement is because the project in Del Mar was going nowhere?
14 Would that be fair?

15 A I wouldn't say that it was more because -- I believe his
16 name was on the -- also mentioned in the case, in the lawsuit
17 that I started. You know, we somehow made contact with him
18 and came up with this kind of an agreement. This thing we did
19 with Tom.

20 Q Are you aware, were there any other hockey players that
21 invested in the Del Mar project? I'll use that for purposes
22 of distinction, Northern Baja?

23 MR. MISKIEWICZ: Objection.

24 THE COURT: Overruled.

25 A From discussions with Phil Kenner and information that I

JUNEAU - CROSS - LaRUSSO

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1 got, there with other players also involved in that
2 investment.

3 Q Did you know any of them?

4 A I'm trying to remember. I think Owen Nolan might have
5 been one. Glen Murray might have been one. Glen Murray, I
6 played with a little bit in Boston, but I can't say that I
7 really know him.

8 Q Are you aware if any of those hockey players who invested
9 in Del Mar received the same deal that you got from Mr. Jowdy?

10 A I don't know.

11 Q So, you know, ultimately you lost all of your investment
12 in the northern project. If you had -- would you have lost
13 that investment if you had stayed in the northern project,
14 Del Mar?

15 A I think that's -- I don't know what would have happened.

16 Q But you were fortunate enough to get Mr. Jowdy to
17 transfer your interest to Cabo, is that right?

18 A Yeah. I guess so, yes.

19 Q Have you ever received any return on your investment for
20 the present project, the one in Cabo, South Baja, California?

21 A Did I get money back?

22 Q Yes.

23 A No.

24 Q I guess it would be -- in order to know if Mr. Jowdy made
25 good, you'd really have to wait and see.

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1 MR. MISKIEWICZ: Objection.

2 THE COURT: Sustained.

3 MR. LaRUSSO: Just a few more questions, if I may,
4 Your Honor.

5 Q Earlier you testified that you actually didn't know if
6 you received your interest in Del Mar. Do you remember that?

7 A Yes.

8 Q If you didn't receive your interest in Del Mar, how did
9 you trade it for your interest in Cabo?

10 A How did I trade?

11 Q How were you able to trade it if you didn't receive your
12 interest?

13 A That was in the process of, like I mentioned, you know,
14 we just ended up communicating together. And I'm not sure
15 exactly what led to this. But I ended up accepting getting a
16 percentage in the Cabo project. Being told, at that time,
17 that something would happen where nothing was happening in the
18 other project.

19 Q Are you aware that the Diamanté Del Mar project has been
20 repossessed by the lender?

21 MR. MISKIEWICZ: Objection.

22 THE COURT: Sustained.

23 MR. LaRUSSO: I have no further questions, Your
24 Honor.

25 THE COURT: Anything further?

JUNEAU-REDIRECT-MISKIEWICZ

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1 MR. MISKIEWICZ: Yes, Your Honor.

2 THE COURT: That being the case, when both sides
3 have questioned the witness, the side that called the witness
4 can ask very brief, very brief redirect questions to cover
5 anything that was covered in the cross. So that's what's
6 happening now, okay.

7 REDIRECT EXAMINATION

8 BY MR. MISKIEWICZ:

9 Q Mr. Juneau, you were shown by Mr. Haley earlier today
10 what is in evidence as, I believe, Defense Kenner 1. Do you
11 remember seeing this document? Do you remember Mr. Haley
12 showing you this document earlier today?

13 A Yes.

14 Q Do you see part of their document indicates, according to
15 this, that you received a percentage in the Little Isle IV
16 project. And I'm pointing to your name, if I can find it.
17 You received 1.14 percent interest in this Hawaiian project.

18 A Yes.

19 Q What does Hawaii have to do with Mexico? Does it?

20 A I don't -- I mean, the only relation to me is that it's
21 the same financial advisor who advised me to go into both.

22 Q Were they separate deals?

23 A I think so, yeah.

24 Q I'll show you this. It's dated April 26, 2006. Do you
25 see that's the agreement that's dated as of April 26, 2006?

JUNEAU-REDIRECT-MISKIEWICZ

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1 A Yes.

2 Q Do you recall -- withdrawn.

3 June 17, 2006, Government Exhibit 733 in evidence,
4 this is one of those e-mails that you received from the
5 defendant, Kenner. Correct me if I'm wrong, the last sentence
6 in that portion of the e-mail to you says (reading):

7 "The investment is 3 percent in Little Isle IV. The
8 whole Hawaiian deal is worth (appraised land) approximately
9 90M right now."

10 You know what 90M means in dollars?

11 A Well, 90 million.

12 Q You asked for clarification at the end. Can you read
13 what you say there, starting from the word "Is 3 percent"?

14 A (Reading):

15 "Is 3 percent of my investment in Little Isle IV LLC
16 also 3 percent of the whole Hawaiian deal?"

17 Q I'm sorry. This precedes -- this line that you just read
18 at 6/17/06, 1:05 p.m., preceded this at 6:28 p.m.. In other
19 words, this is a response that you got from your question
20 about you have 3 percent investment in Little Isle IV.

21 A It looks like the response.

22 Q So why does the document -- if you actually saw this,
23 dated a couple of months earlier April 26, 2006, why would it
24 say that you say only 1.14 percent?

25 A I couldn't tell you why. I was presented with the

JUNEAU-REDIRECT-MISKIEWICZ

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1 document. I don't remember seeing this before.

2 Q Well, would you have written in June of 2006 asking for
3 clarification about what you owned in Hawaii if you read this
4 document a couple of months earlier?

5 A I don't think so.

6 Q Now, there are many pages in this document that Mr. Haley
7 presented to you with what appear to be signatures of
8 different people, right?

9 A Right.

10 Q Now, come to the page with your signature. I'm going to
11 ask you to compare it to the signature that appears in another
12 document in evidence, 2152. Government's 2152. Does it looks
13 like the same signature to you?

14 A Not at all. I mean, that's -- again, it was very
15 interesting to see this document earlier.

16 Q For the record, the signature that appears on what is
17 supposedly page 9 of Defense Kenner 1, is that your signature?

18 A This is not my signature.

19 Q No?

20 A Not at all. It's obvious.

21 Q Any doubt?

22 A No doubt.

23 Q No doubt it's not your signature?

24 A No doubt. One thing that I did a lot in my life is sign
25 my name on hockey cards and different things. I never signed

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1 that way.

2 Q You were asked a series of questions by Mr. Haley about
3 e-mails and e-mails that you got from the FBI. Do you recall
4 those questions this morning?

5 A (No audible response.)

6 Q Do you recall being asked those questions?

7 A Yes. I'm sorry. Yes.

8 Q Did you -- the e-mails that you were shown here, were
9 they your e-mails?

10 A Yes, I believe so. They really looked like my e-mails.
11 I would have to say they are.

12 Q The e-mail that Mr. Haley showed you earlier, do you know
13 where he got that from?

14 A No, I don't.

15 Q You don't know?

16 A No.

17 Q Did Mr. Haley ever subpoena your e-mail, did he ever ask
18 you for all of your e-mails?

19 A No.

20 Q Would you be willing to give all of your e-mails to
21 Mr. Haley if he asked you?

22 A If it helps the process, of course. Why would I not?

23 MR. HALEY: May we approach?

24 THE COURT: I will sustain the objection. I assume
25 that is an objection.

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1 MR. HALEY: Yes, it is, Your Honor.

2 Q Do you know if the FBI somehow took your e-mails and
3 deleted some of them? Do you have any reason to believe that
4 happened?

5 A Not at all.

6 Q Mr. Haley went over this morning and asked you a series
7 of questions about what you knew about the line of credit when
8 you spoke to the FBI. Do you remember being asked that series
9 of questions like that?

10 A Yes.

11 Q In 2009, do you remember what you told the FBI about your
12 comfort level regarding the lines of credit and what it was
13 being used for?

14 A I don't remember it.

15 MR. MISKIEWICZ: May I approach?

16 THE COURT: Yes.

17 Q I'm showing you what's been marked as 3500.

18 MR. HALEY: Your Honor, the witness was not
19 permitted to finish the answer before the government said,
20 "May I approach."

21 THE COURT: You may finish.

22 A I don't remember the discussion of 2009 with the FBI.

23 Q I'm showing you what's been marked as 3500 JJ-1. Just
24 take a moment. I'm going to point to it. Read it to
25 yourself. And then I'm going to ask you some questions.

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1 (Hanging.)

2 Does that refresh your recollection what you told
3 the FBI in 2009, what your feeling was about this line of
4 credit for Hawaii?

5 A I'm sorry, it doesn't refresh. I don't remember the
6 conversation that day. I'm not sure what it was.

7 Q All right. Forget the FBI interview in 2009. In 2004,
8 2005, 2006, when the line of credit was open, did you feel
9 comfortable with what Mr. Kenner was doing with it?

10 A With what?

11 Q With your line of credit in Hawaii?

12 A I mean, I don't remember being aware of opening the line
13 of credit in relation to this loan, in relation to this. In
14 the situation I was in at the time, I was just asking to get
15 out of whatever I was in. I mean, I was not in a position to
16 go into something else.

17 Q In 2009 you had learned what it was for, right? About
18 the line of credit?

19 A 2006 or 2007 when I received the Northern Trust letter.

20 Q What did you receive from Northern Trust?

21 A I think I was away. I don't know if I was away in Munich
22 for the kids up there. Anyway, I end up getting a letter that
23 was past due and saying that I had a line of credit that was
24 deficient. So that's -- from what I remember, that's the
25 e-mail that I saw. Getting in touch by e-mail with Phil

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1 Kenner asking about it. And then decided to contact Northern
2 Trust directly.

3 Q Why did that come as a surprise to you, that you had a
4 past due on your line of credit?

5 A Well, I didn't recall having a line of credit in the
6 first place. So the whole thing was very surprising. I was
7 trying to figure out what this was.

8 Q You testified eventually you got a communication from the
9 Northern Trust Bank saying that the line of credit had been
10 paid over, right?

11 A Correct.

12 Q Do you know where Mr. Kenner got the money to pay off
13 your \$500,000 line of credit?

14 A No. No.

15 Q You know Owen Nolan, you testified a moment ago you do.

16 A Yes. Well, I mean, I know him. I played against him. I
17 have met him that one time in Arizona.

18 Q Did you ever borrow \$500,000 from Mr. Owen Nolan?

19 MR. HALEY: I would object at this point. He's
20 going outside the scope of the direct.

21 THE COURT: I think that question is okay. You can
22 answer that.

23 A So I never borrowed money from -- from anyone in that
24 amount. I mean, I didn't borrow money from Owen Nolan.

25 Q When Mr. Haley showed you an e-mail in which Mr. Kenner

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1 said I paid your loan off --

2 A Yes, I saw that.

3 Q -- if there are bank records showing that the money came
4 from Owen Nolan to pay off your line of credit, why would he
5 do that?

6 MR. HALEY: Objection.

7 THE COURT: Sustained. Let's finish up the
8 redirect.

9 Q You were also shown by Mr. LaRusso a rather lengthy
10 e-mail. I want to go over a couple of things on this e-mail,
11 the e-mail chain between yourself and Tony Constantine
12 regarding the settlement. I highlighted a couple of portions
13 of the exhibit, which is the Defendant's Exhibit 13-607.
14 Mr. Constantine says, at one point, in response to your e-mail
15 (reading):

16 "You have been grossly ill advised by your attorneys
17 and their so-called experts, as well as by a couple of
18 disgruntled former employees/colleague of Phil's who know
19 absolutely nothing about me or my business."

20 Do you know if any of that is true?

21 A That was someone's perception.

22 Q Turning to the next page. (Reading):

23 "As far as your accusation towards Phil, you can
24 blame him all you want for whatever has happened between all
25 of are us, but those three of you who are grown, intelligent

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1 men, did not care enough to look into your own investment, not
2 even enough to make a phone call in several years, cannot
3 blame Phil when 15 to 20 other investor clients are in
4 constant communication with me and have no issues whatsoever
5 with their investments or their relationship with anyone
6 involved."

7 Other than what's in here, do you know if that's
8 true; 15 or 20 other investor clients are in constant
9 communication with me and have no issues whatsoever?

10 A I couldn't say it is.

11 Q Other than Mr. Constantine saying so in this e-mail, do
12 you know -- do you agree or disagree with the truth of this
13 statement?

14 A Not at all.

15 Q Lastly, on the third page, it says, at one point
16 (reading):

17 "Please also note" -- in the e-mail on May 5th, on
18 line 9 here, it states that -- "I have a very limited window
19 of opportunity to pay you. And basically, if you or your
20 attorneys screw around, we will not be able to execute a
21 settlement."

22 Do you know why there was a limited window of
23 opportunity to pay you back for your \$550,000 investment?

24 A No.

25 Q You said earlier, in this same e-mail that Mr. LaRusso

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1 showed you, this is you speaking to -- or e-mailing

2 Mr. Constantine (reading):

3 "You informed during our phone discussion last
4 Wednesday that you really want to pay me back the \$550,000."

5 Was that a conversation that you had directly with
6 Mr. Constantine?

7 A I think so.

8 Q Did he say to you that he was prepared to pay you cash,
9 \$550,000?

10 A Yes, it seemed like it.

11 Q Did there come another time when he said he couldn't pay
12 you \$550,000?

13 A I believe the next conversation, because of money he had
14 to pay his lawyer or something, that it was not possible for
15 him to do that anymore.

16 Q He got out of the deal?

17 A Yes.

18 MR. MISKIEWICZ: No further questions.

19 THE COURT: Anything further, Mr. Haley?

20 MR. HALEY: Very brief, Your Honor.

21 RECROSS-EXAMINATION

22 BY MR. HALEY:

23 Q Sir, kindly take a look at Kenner Exhibit 1. It relates
24 to page 9. We can agree that's not your signature, is that
25 correct?

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1 A That's correct.

2 Q That signature appears to be placed on the wrong line, is
3 that correct?

4 A Well, it's on the line --

5 MR. MISKIEWICZ: Objection.

6 THE COURT: Stick to the point.

7 Q Sir, are you familiar with the signature of Dimitri
8 Khristich?

9 A No.

10 MR. HALEY: Judge, I'm not going to conduct a
11 recross based on the redirect. I'll rely on my previous
12 cross-examination.

13 THE COURT: Mr. LaRusso?

14 MR. LaRUSSO: A few questions.

15 RE CROSS-EXAMINATION

16 BY MR. LaRUSSO:

17 Q Is it fair to say in the situation with Mr. Constantine,
18 more time would equal more legal fees?

19 A Well --

20 Q More than you can spend negotiating, settling, more legal
21 fees would be piling up, is that correct?

22 A Well, at that time there was no legal fees involved
23 because it was between us. I mean, on my side, anyway.

24 Q But if you didn't settle it would require more legal fees
25 to file a suit, hire a lawyer in order to pursue it, correct?

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1 A Probably, yes.

2 Q You spent a lot of money on the initial suit, is that
3 correct?

4 A Actually, yes.

5 Q Mr. Constantine wanted to give you the opportunity,
6 instead of paying the lawyers. That's what he did, right?

7 MR. MISKIEWICZ: Objection.

8 THE COURT: Sustained as to the form.

9 MR. LaRUSSO: No questions.

10 THE COURT: You can step down. Thank you,
11 Mr. Juneau.

12 (Witness excused at 3:30 p.m.)

13 We will take our break. I know it's late in coming,
14 but I appreciate your patience. Then we will be calling the
15 next witness. Don't discuss the case.

16 (Whereupon the jury leaves the courtroom at 3:30
17 p.m.)

18 A JUROR: How much time?

19 THE COURT: 20 minutes.

20 Who's the next witness?

21 MR. MISKIEWICZ: Michael Peca, P-E-C-A.

22 (Whereupon a recess was taken.)

23

24

25

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1 (After recess)

2 THE COURT: Members of the jury, I'm going to
3 ask the government to call its next witness

4 MR. MISKIEWICZ: The government calls Michael
5 Peca.

6 THE COURT: Mr. Peca. If you would just step
7 over here next to the witness stand and remain standing
8 for the oath once you get there.

9

10 **MICHAEL PECA**

11 called as a witness, having been first duly sworn,
12 was examined and testified as follows:

13 THE CLERK: Please state your name and spell it
14 for the record.

15 THE WITNESS: Michael M-I-C-H-A-E-L, last name
16 Peca, P-E-C-A.

17 THE COURT: Please be seated. If you could just
18 pull your chair a little closer to the mic. Thank you.

19 Go ahead, Mr. Miskiewicz.

20 MR. MISKIEWICZ: Thank you, your Honor.

21

22 **DIRECT EXAMINATION**

23 **BY MR. MISKIEWICZ:**

24 Q Good afternoon, sir.

25 Mr. Peca, is it correct, sir, that you're

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1 currently retired?

2 A Correct.

3 Q And what are you retired from? What did you used to
4 do for a living?

5 A I was a professional hockey player.

6 Q And when did you first become a professional hockey
7 player?

8 A My first year in professional hockey was the '94/'95
9 season.

10 Q Who did you play for in the '94/'95 season?

11 A Vancouver Canucks.

12 Q And what other teams, if any, did you play for in
13 your career with the NHL?

14 A In order, Vancouver, Buffalo, New York Islanders,
15 Edmonton Oilers, Toronto Maple Leafs, Columbus.

16 Q And when did you retire?

17 A I retired in the 2008/2009 season.

18 Q And where did you grow up?

19 A I grew up just outside of Toronto in the suburb of
20 Northrup. It's a suburb.

21 Q And what kind of a town or what kind of area did you
22 grow up in?

23 A Not the greatest neighborhoods. I came from a family
24 that didn't have a lot of money. So I don't remember
25 where we actually lived. We moved eight times in an

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1 eleven period.

2 Q So when did you begin playing hockey?

3 A I started skating when I was two years old. They
4 just decided to start me when they started my older
5 brother who is two years older than I am. So I started
6 skating when I was two, and played until I was 16.

7 Q Is it fair to say that this was a life's ambition to
8 play professional hockey?

9 A Yes. I know I think like any kid you grow up and you
10 love the game. And you watch your favorite team on
11 television. And you grow up wanting to be a national
12 hockey player.

13 But as I grew up for me hockey was the thing I
14 loved to do. Again because my family background was, both
15 of my parents never graduated high school. So for me, I
16 wanted to go college. That was my ambition.

17 Q What if anything did you do? Well first of all, did
18 you go to college?

19 A I did not.

20 Q Did you decide to sign instead with the NHL?

21 A No. The process was, I verbally committed to
22 Michigan State. But then decided the night before the OHL
23 draft, which is a major union league in Ontario, to enter
24 the graft for the OHL.

25 In doing so I received a four year school

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1 package with the Sudbury Wolves.

2 Q Is that S-U-D-B-U-R-Y?

3 A Correct.

4 Q What kind of things did you do to prepare yourself to
5 become a professional athlete in the NHL?

6 A As a kid growing up, you know, you get to an age
7 where you start to realize what your dream is. You know,
8 you see guys that help you ahead. They make the
9 progression to junior hockey, and then they start to move
10 on.

11 So it starts to become a little more of a
12 reality. So when that happens you realize that there is
13 going to be a lot more work involved. It's, it goes
14 beyond just being on the ice and playing the game. And it
15 involves now training away from home.

16 Given the fact that we grew up and we didn't
17 have a lot of the money, we had to improvise. We had to
18 do pushups and pull ups. And I remember being a kid and
19 hearing the you know a football player from the Dallas
20 Cowboys running back just did pushups and pull ups. AND
21 that is what I was limited to because I couldn't join a
22 gym or hire a trainer.

23 I would run a lot. I remember one time I was
24 running and somebody on the street had tires out front
25 that were going to be put in the garbage. So I thought I

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1 might as well take one of them. And so occasionally I
2 would take a tire and go to track and just run the track
3 dragging a tire.

4 Q Are you currently a resident of New York State?

5 A I am.

6 Q And what do you do now that you're retired, if
7 anything?

8 A I am the director of hockey operations for a youth
9 hockey program in the Buffalo area, Buffalo --

10 Q Mr. Peca, do you know the defendant, one of the
11 defendants in this case, a man by the name of Philip
12 Kenner?

13 A Yes, I do.

14 Q Do you see him in the courtroom today?

15 A I do.

16 Q Would you point to him and describe an article of
17 clothing he is wearing?

18 A Right over here wearing a white button-down shirt and
19 longish hair.

20 MR. MISKIEWICZ: May the record reflect that
21 Mr. Peca has identified the defendant?

22 MR. HALEY: Yes, sir.

23 THE COURT: Yes.

24 MR. MISKIEWICZ: Thank you.

25

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1 BY MR. MISKIEWICZ:

2 Q When did you first meet Mr. Kenner?

3 A I first met Phil, I think it was in -- my first year
4 in Buffalo was '95/'96. So it was at the conclusion of
5 the '95/'96 season or the beginning of the '96/'97 season
6 while I was in Buffalo.

7 Q And how did you come to meet him?

8 A He was introduced to me from a player at the Anton
9 Thun.

10 Q And was this just a social introduction, or was there
11 any other business purpose for this introduction?

12 A The purpose was to kind of get me onto a path of
13 saving some money. I played my rookie year in Vancouver
14 and at the conclusion of my rookie season I was traded to
15 the Buffalo Sabers.

16 And in doing so my interest at the time for tax
17 purposes I moved a lot of my financial stuff which
18 actually wasn't a whole lot in the United States. And
19 while I was in the states for a little while, Phil Kenner
20 was the first guy that was introduced to me for that
21 reason.

22 Q Did there come a time that you hired or engaged
23 Mr. Kenner to be your financial advisor?

24 A Yes. I can't remember if it was at the spa the first
25 meeting or if we had a second meeting. I remember, you

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1 know the presentation involved Derek Sanderson who was the
2 first NHL player to sign a million dollar contract from
3 Boston. And I remember Phil telling a long touching story
4 about Derek Sanderson, where he was conned by his advisor
5 for a million dollars. So I was sitting there listening
6 to him telling the story about Derek Sanderson who is also
7 in the room. It was obviously a very compelling story.

8 Q Do you know what, do you know whether or not he was
9 still at that time working at a company called State
10 Street?

11 A Well that was the firm that he was at the time when I
12 first started working with him. It was a company called
13 State Street Capital.

14 Q And this was approximately 1996, '97?

15 A Correct, yes.

16 Q How long did you continue using the services of
17 Mr. Kenner as a financial advisor?

18 A The termination of the process wasn't a, you're fired
19 sort of thing. It was a slow erosion of our business
20 relationship. You know, which was kind of the two years
21 of '07 to '09.

22 Q Now so between '96/'97 and '07 to '09, did Mr. Kenner
23 stay in one company or did he move to different companies?

24 A There were several companies.

25 Q Do you just recall any of the names?

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1 A Yes. From State Street he moved over to Asante
2 Global Advisors. And from there he started his own firm
3 called Standard Advisors.

4 Q Now when he was your financial advisor at any of
5 these firms, did you pay a fee, or how was he compensated
6 for the work he would do for you?

7 A The fees were usually based on a percentage of your
8 total investment dollars.

9 Q So is it correct that you had some sort of portfolio
10 that had a total amount of money in it and he was getting
11 a fee that was equal to a percentage of that?

12 A Correct.

13 Q Do you remember how often he would get paid?

14 A It would be billed quarterly out of our investment
15 account.

16 Q And do you know how the draw down from your
17 investment account would occur? In other words, how would
18 he get paid? Would you write him a check every quarter?

19 A It would be deducted or withdrawn from our investment
20 account.

21 Q Deducted or withdrawn by whom?

22 A By the institution that, or bank that the, where the
23 money was being held.

24 Q And during this period of time, you were living in
25 various different states, correct?

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1 A Correct, and countries.

2 Q Okay, I just want to just focus your attention now to
3 the period of let's say approximately 2002/2003. Where
4 were you living?

5 A 2002/2003 I was living on Long Island, New York.

6 Q Do you know where Mr. Kenner was living?

7 A I believe Mr. Kenner was on Long Island.

8 Q And did you communicate with Mr. Kenner during this
9 period of time?

10 A Yes.

11 Q How would you communicate with him?

12 A There would be phone calls, e-mails, in person
13 meetings, various ways.

14 Q Beginning in '96/'97 and up through the early 2000's,
15 could you describe what kinds of investment options did
16 Mr. Kenner place you in and was managing you in?

17 A Well the program from the outset was that, exactly
18 what we were looking for. You know, I came from mumble
19 beginnings, so I didn't live a frivolous lifestyle. And
20 the way the program was basically set up is, you know, if
21 this is what I made but this is all I need to live on on a
22 monthly basis, I would basically get that stipend wired in
23 my account for State Street and the rest would remain as a
24 direct deposit in my investment account.

25 Q What kind of investments were these?

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1 A At the time it was just limited to stock market which
2 he put in large cap and small cap US stocks and different
3 things like that.

4 Q Bonds?

5 A It might have been some bonds early on. I wasn't
6 making, relatively a lot of money. So I can't remember
7 exactly.

8 Q Did there come a time -- moving forward to
9 approximately the year 2003.

10 Did there come a time that your investments or
11 the type of your investment expanded or changed to land
12 development properties?

13 A Everything was fairly conservative up until I signed
14 a five year contract in 2001 with the New York Islanders.

15 Q And okay, and was that a contract that was made you a
16 lot of money?

17 A It did.

18 Q And then from that moment on did your investments
19 change?

20 A Yes.

21 You know that the conversation turned to
22 diversifying, which meant, you know, not just having
23 everything in the stock market, but now, you know, branch
24 out him into other options, whether it be real estate or
25 other sorts of companies.

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1 Q I want to focus your attention to one item.

2 Did you ever, were you ever talking to anyone
3 about a potential land development project in the state of
4 Hawaii?

5 A I was.

6 Q And who talked to you about that?

7 A Phil Kenner.

8 Q Can you tell the members of the jury, what was the
9 nature of this Hawaii project if you recall?

10 A Well, it was going to be a land acquisition. There
11 was tons of acres on, I can't remember if it was the
12 southeast or southwest shore of the big island of Hawaii.

13 At the time I was told it was mostly sugarcane
14 farms and coffee bean farms. And the plan was to, you
15 know, develop it, build ranches for residential use.
16 There was talk about a commercial part of the property
17 that was on the inland side of an interstate road that ran
18 through the property. So I mean it seemed interesting to
19 listen to.

20 Q And when you say it was talked about, somebody said
21 something to you? Who, who were you referring to?

22 A Say that again?

23 Q When you say you were told about this project, who
24 told you about the project?

25 A Phil.

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1 Q In this period of time, 2003, anybody else other than
2 Mr. Kenner talk to you about this property?

3 A No.

4 Q By the way, by 2003 you had been in the NHL for five
5 or six years, I guess. What kind of a relationship did
6 you have with the defendant? Was it purely business or
7 ways it social or a mix?

8 A I mean to draw a comparison if I could, I mean he was
9 in a lot of respects like Jerry Maguire in the sense that
10 he wasn't just my agent. But the relationship was very
11 similar. It was very personal. And he had been at the
12 house. I had been at his house in Scottsdale, Arizona, I
13 knew his family well. I wouldn't consider this just a
14 business relationship. I wouldn't even consider him as a
15 friend. I would consider him as very good friend.

16 Q When you say, mention Jerry Maguire, you're talking
17 about the movie character?

18 A Correct.

19 Q The land in Hawaii, do you know if the lands that
20 were to be acquired was it already developed, or was it
21 vacant land?

22 A Like I said, I think that -- I don't know if there is
23 a lot of anything at all that I can remember from the
24 conversation. It was mostly sugarcane farms and coffee
25 bean farms.

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1 Q Did you ever travel to Hawaii to look at the
2 property?

3 A I never had an opportunity to get there, no.

4 Q So your description of the property, it came from
5 Mr. Kenner?

6 A Correct.

7 Q So did there ever come a time that you decided
8 whether or not to invest in this project in Hawaii?

9 A Yes. After you know, talking about it a little bit I
10 did decide to make that investment.

11 Q And how much money did you invest in the project?

12 A The investment was in two pieces. There was a
13 hundred thousand dollars cash portion that was invested.
14 And then there was going to be a line of credit for
15 \$1.775 million that I had the ability to do. That was
16 also going to be invested, which was going to be used, I
17 was told to expedite some of the vertical construction,
18 building some ranches, infrastructure, things like that.
19 And that was to give me roughly 12 to 13 percent of the
20 Little Isle IV, LLC.

21 Q Now first of all, what is Little Isle IV? Tell the
22 members of the jury what is the Little Isle IV?

23 A Little Isle IV was the investment company group that
24 was going to be used to basically develop the land in
25 Hawaii.

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1 Q Do you know who created Little Isle IV?

2 A I think Phil Kenner did.

3 Q And your investments were going to go through Little
4 Isle IV, the cash, your line of credit was going do go
5 through Little Isle IV?

6 A Correct.

7 Q And you would have been given -- I'm sorry. What
8 percentage of it?

9 A The way Phil described it, he would give us 12 to 13
10 percent of roughly fifty percent of the project.

11 Q Okay, your understanding was Mr. Kenner's Little Isle
12 IV was one of a few companies that had some sort of
13 involvement in the Hawaii project?

14 A I wasn't aware of any others.

15 Q So did you in fact wire transfer \$100,000?

16 A We did wire transfer a hundred thousand, correct.

17 Q By the way, this is again roughly 2003. Where you
18 were living?

19 A Long Island, Huntington Bay, New York.

20 Q And so you would have, is that where you were when
21 you executed the wire?

22 A I believe so. I mean if there was an off season we
23 would have been back home in Buffalo. But I think it was
24 during the season to the best of my knowledge.

25 Q Do you remember where you sent money, what bank?

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1 A No, I don't recall exactly.

2 Q Now this line of credit that was for \$1.775 million.
3 Where -- well, did you agree to enter into a line of
4 credit or take out a line of credit?

5 A Did I agree to it?

6 Q Yes.

7 A Yes.

8 Q And what was the collateral, or what was securing
9 that line of credit in the event that you did draw down on
10 it?

11 A Well, the way it was described to us is, a lot of
12 money was going to Northern Trust. So if it went to
13 Northern Trust, I was going to open a line of credit. And
14 the way that Phil described it is a good faith gesture.
15 We're going to open and they will manage our bond account,
16 which at the time was a big thing for my wife and I,
17 because, you know, the market started to strain and we
18 wanted to make sure we were fifty-fifty in our portfolio
19 at the time.

20 So we agreed to move our bond portfolio from
21 Schwab over to Northern Trust so that they could manage it
22 at the time.

23 Q Why Northern Trust?

24 A I guess that's where the LLC was set up at the time.
25 Or that is just where the line of credit was.

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1 Q Who told you to move it to, or who told you to open a
2 line of credit -- I mean the line of credit I suppose
3 could have been opened anywhere. Who directed you, if
4 anybody, to Northern Trust?

5 A Phil did.

6 Q And so you said you had a bond account in Schwab?

7 A Correct. That's, Schwab Bank is where our, was our
8 custodian at the time, where our investment portfolio was
9 set up.

10 Q And you transferred what was in that bond account to
11 Northern Trust?

12 A Correct.

13 Q And then what was in there was going to be the
14 collateral for the line of credit?

15 A It was, yeah. You know the at the onset of the
16 decision to do this, which were told this is going to be a
17 six to nine month thing.]

18 Phil said it would be six to nine months, we are
19 going to get some vertical construction going. We want to
20 get this thing moving forward. And we want to get some
21 financing that will come through. And we will take down
22 the line of credit. And we'll move the bond account back
23 over to Schwab.

24 Q This bond account, what did it represent to you, how
25 important was it?

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1 A It was, I think in all essence it represented our
2 safety net. You know, when the stock market after 2011
3 became fairly unpredictable. And it was our safety net.
4 It really was.

5 Q Would you say this was your retirement account?

6 A A large part of it, absolutely.

7 Q Now you said Mr. Kenner never told you this was going
8 to be -- was it the line of credit that was only going to
9 be around for a few months, or was it the whole project
10 was going to be done in a few months?

11 A The line of credit whatever it was going to be paid
12 back and our bond account would be getting moved back to
13 Schwab in six to nine months.

14 Q From the time you opened it?

15 A Correct.

16 Q Did that happen?

17 A It did not.

18 Q Did Mr. Kenner make any other representations to you
19 about if the line of credit was drawn against, anything
20 having to do with -- how would you pay any interest or
21 anything like that, that accrued on the line of credit?

22 A He said that he would be responsible for any interest
23 payments or any monies to be paid back into the account.
24 And I remember at one point he said there was \$40,000 or
25 something from the project that did get put back into the

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1 account.

2 Q And did he ever indicate to you that, what the level
3 of risk was if you were getting yourself into by opening
4 up this line of credit?

5 A No. Just reassured that it was a short-term thing.

6 Q When you opened up a line of credit with Northern
7 Trust, if -- you said the money would be used as
8 represented to you, the money would be used for vertical
9 construction? What does that mean?

10 A Well just the talk was there would be two to five
11 acre properties for residential purposes. And they would
12 be building ranches and things like that. And the plan
13 was to build a couple of model ranches, get some
14 prospective buyers in there and start selling off the
15 land.

16 Q And did you have any other, did you at that point
17 when you first opened this line of credit, was the money
18 that would be available for your line of credit, was it to
19 be used for any other purposes other than Hawaii project?

20 A Nothing indicated to me beforehand, no.

21 Q Okay. I want to just be very, very specific here.

22 Did Mr. Kenner tell you -- what if anything did
23 Mr. Kenner tell you about where the money from the line of
24 credit would go to, if it was going to be drawn against at
25 all?

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1 A I was told that the line of credit would be used
2 solely and only for the Hawaii project.

3 Q Did you know whether or not, and did you authorize
4 Mr. Kenner to have access to your line of credit?

5 A Yes, I did.

6 Q I'm showing you what has been marked for
7 identification as Government Exhibit 2142.

8 Showing you government's 2142. Mr. Peca, take a
9 moment and look at that.

10 Do you recognize that?

11 A I do.

12 Q Do you recognize the signature?

13 A Yes. It's my signature.

14 Q And what is that document?

15 A It's just allowing Phil access to the referenced line
16 of credit money to be deposited to Little Isle IV.

17 MR. MISKIEWICZ: Government moves for the
18 admission of 2142.

19 MR. HALEY: No objection, your Honor.

20 MR. LaRUSSO: No objection, your Honor.

21 THE COURT: Government Exhibit 2142 is admitted.
22 (Government Exhibit 2142 in evidence.)

23 BY MR. MISKIEWICZ:

24 Q Just very briefly for the record. What is the date.
25 You can see it on the screen or above you.

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1 A March 11, 2005.

2 Q Is that at or about the time that the line of credit
3 went into effect?

4 A It's about the right time, yes.

5 Q And do you see where it says Northern Trust Bank line
6 of credit? Could you read the account number?

7 A 289369.

8 Q That was the line of credit opened in your name,
9 correct?

10 A Correct.

11 Q Now did you get monthly statements when you were, you
12 know, when you had your bond account, or whatever, your
13 stocks and bonds? Did you get monthly statements from the
14 banks that were, for which your investments were being
15 traded?

16 A Yes. The only thing I received from Northern Trust
17 Bank was the activity reports on a monthly basis with
18 relation to the bond account.

19 Q The bond account meaning what was, meaning
20 collateral?

21 A Correct.

22 Q And during this period of time, what do you recall,
23 what did those statements indicate? Were you losing
24 money? What was going on? Was there anything unusual
25 about what you saw in those monthly accounts?

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1 A No. The last time the bond account always seemed to
2 have pretty steady success in a positive way.

3 Q Did you get any monthly or quarterly statements for
4 the line of credit account?

5 A I did not.

6 Q Do you know where they were mailed to?

7 A I did not at the outset, no.

8 Q I'm just talking about at that time. Did you know
9 where they were mailed to?

10 A I did not.

11 MR. MISKIEWICZ: Your Honor, pursuant to
12 stipulation by the parties, the government moves for the
13 admission of Government Exhibit 2001.

14 THE COURT: Is that correct?

15 MR. HALEY: Yes sir. I'm sorry.

16 MR. LaRUSSO: Yes, your Honor.

17 THE COURT: 2001 is admitted.

18 (Government Exhibit 2001 in evidence.)

19 BY MR. MISKIEWICZ:

20 Q Mr. Peca, looking at 2001. Looking at the first page
21 of 2001.

22 Do you see your name at the very top left-hand
23 corner?

24 A I do.

25 Q And do you see that number 2889369?

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1 A I do.

2 Q Is that your line of credit account number? Is that
3 the same line of credit account number as 2042, if you
4 recall?

5 A It is.

6 Q If I can, I'm showing you 2142 right below it. Do
7 you see that number 289369?

8 A Yes.

9 Q The same number as what is on the Government Exhibit
10 2001?

11 A Yes.

12 Q Have you ever seen -- not have you ever seen.

13 During the time you had this line of credit,
14 have you ever a document like this?

15 A I have never seen a loan transaction history ever.

16 Q For your line of credit?

17 A Correct.

18 Q I'm going to show you what has been marked for
19 identification purposes as Government Exhibit 2002.

20 MR. MISKIEWICZ: Again, your Honor, pursuant to
21 stipulation between the parties the government now moves
22 for the admission of Government Exhibit 2002.

23 THE COURT: Correct?

24 MR. HALEY: Yes, sir.

25 MR. LaRUSSO: No objection.

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1 THE COURT: 2002 is admitted.

2 (Government Exhibit 2002 in evidence.)

3 BY MR. MISKIEWICZ:

4 Q Mr. Peca, if you would look at 2002. First of all,
5 at the time of any of the dates here, specifically 2003,
6 did you ever see this document back then in 2003?

7 A I did not.

8 Q Or this one, one line there? On or about October 19,
9 do you see where it said description net proceeds?

10 A I do.

11 Q And this is under a heading called, deposits and
12 credits. Do you see where the loan account number is
13 stated in the middle?

14 A I do.

15 Q Can you read the account number?

16 A 289369.

17 Q Whose line of credit is that?

18 A That would be mine.

19 Q Do you see \$395,000 being deposited or indicated
20 there being deposited?

21 A I do.

22 Q At the time that of this transaction, were you
23 advised that this was going on?

24 A No.

25 Q You never received this or anything like this that

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1 would tell you that \$395,000 of your line of credit went
2 somewhere?

3 A I never received any transaction history from the
4 line of credit at all.

5 MR. MISKIEWICZ: Your Honor?

6 THE COURT: Yes, it's time to break. It's 4:30,
7 so we'll reconvene tomorrow morning at 9:30.

8 Don't discuss the case.

9 Don't read or listen to anything regarding the
10 case.

11 Have a good night and safe trip home.

12 (The jury left the courtroom.)

13 (Continued on the following page.).
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1 THE COURT: You can step down. Everyone can be
2 seated.

3 I want to put a couple of rulings on the record
4 on the last witness to the government's objections. The
5 government objected to one of the documents coming in
6 because the witness did not recall whether he had all the
7 pages of -- Mr. Juneau could not recall whether all the
8 pages of the document were together or he saw pages
9 together, and I concluded that should go to the weight of
10 the evidence once he identified that signature, that
11 particular document it appeared to be a signature, it
12 appeared to be his signature. I thought it was a
13 sufficient basis for the defense to offer it. Whether or
14 not he received the entire document goes to the weight of
15 the evidence based upon his other testimony or testimony
16 from any other witness.

17 There were a number of objections about the
18 e-mails with Mr. Constantine, it was a long e-mail about
19 Mr. Constantine and some objections with respect to some
20 of the airplane testimony and, I guess, documentation. I
21 think the government opened the door by going into some
22 detail as to the settlement and the interaction between
23 Mr. Constantine and Mr. Juneau, they opened the door to
24 allowing Mr. La Russo to then put in other exchanges and
25 interactions to try to establish -- even though I did tell

1 the jury that there was no allegation that the settlement
2 itself was fraudulent because the government, as
3 Mr. La Russo did throw out, did throw out evaluations and
4 things like that, I allowed him to do that. If the only
5 purpose for getting the airplane in was to show that
6 Mr. Constantine had an airplane, that was the purpose of
7 it, then I don't know why there was a level of detail with
8 respect to the valuation/, that wasn't the point of the
9 testimony. But once that door was opened, that door --
10 and Mr. Haley with respect to the e-mails, too, I think
11 it's permissible to try to establish what the nature of
12 the relationship was in terms of the level of
13 communication, the nature of the communication, the
14 frequency of the communication, because that could be
15 relevant as relates to the allegations in the case. So
16 that was the basis for the Court's ruling.

17 MR. MISKIEWICZ: Thank you, your Honor.

18 THE COURT: With respect to Mr. Peca, do you
19 expect any issues tomorrow with respect to any documents?
20 I'm hoping that we can streamline any documentary issues.
21 I see there were stipulations today. But are there any
22 issues like Mr. La Russo, the point you raised to me, with
23 Mr. Juneau, I want to know if there are any issues like
24 that tomorrow with Mr. Peca?

25 MR. MISKIEWICZ: With respect to the

1 government's direct I don't know of any issues, and I
2 think most of the bank records if not all the bank records
3 I'm going to be showing him are the subject of
4 stipulations.

5 What I would, what I will do overnight is I'll
6 assemble all of the exhibits that are part of one or other
7 stipulations and move them in en mass.

8 THE COURT: That would be efficient.

9 MR. HALEY: I have a few additions. I echo the
10 Court, if Mr. Miskiewicz would, I know he will, I don't
11 represent these are all exclusively because he hasn't
12 finished testifying yet.

13 THE COURT: Mr. La Russo, show the government
14 any exhibits that you claim need interpretation at trial
15 to cross, see if they have an objection, and the same
16 thing that he's proposing to do. If the government has no
17 objection to a series of exhibits, I think it would be
18 efficient to offer the series of exhibits in the beginning
19 of cross en mass so we're not offering them one by one.
20 So you're in agreement. I think it will save time.
21 You're all experienced lawyers, you know the jury will get
22 frustrated that I'm not using the time efficiently. I
23 really want to start at 9:30 tomorrow morning. If I tell
24 them 9:30 and we don't start 9:40 or 9:50 that's not a
25 good practice.

1 MR. HALEY: The issue -- I will go back to my
2 office today, your Honor, make a phone call if I can, we
3 have not yet received them. I don't know if
4 Mr. Mascarella is going to bring the records with him. I
5 don't know what level of communication

6 MS. KOMATIREDDY: Your Honor, Mr. Mascarella is
7 not a current employee of,.

8 THE COURT: He's not a current employee? Is he
9 a witness.

10 MS. KOMATIREDDY: He is a witness in our case,
11 correct, your Honor, but the plaintiff stipulated to what
12 are original business records in the Northern Trust
13 production that the government has produced. So as far as
14 the government's case, we're planning on calling
15 Mr. Mascarella with his personal knowledge --

16 THE COURT: Do you have a representative of
17 Northern Trust currently.

18 MR. HALEY: No, sir. The answer is no and I
19 don't know that I need one, Judge.

20 THE COURT: I want you to find out if they're
21 the records.

22 MR. HALEY: I will, not, that's why I brought it
23 up. When I leave here I will do that. My view is the
24 records for the subpoena that was issued required they
25 provide a certification. My view would be that they come

1 in with a certification. My hope would be with the
2 certification there would be no objection from the
3 government as to the authenticity of it.

4 THE COURT: I hope, too. How do you know who
5 are you going to call when you leave here today? You
6 don't have a contact person.

7 MR. HALEY: Judge, I don't want to take up the
8 Court -- I believe speaking with your law clerk, was there
9 a number on the letter?

10 THE COURT: Let me ask my law clerk if she has a
11 contact person. All we have, all we know is from the
12 marshals service, they served it last Wednesday and the
13 name on the docket sheet they served the subpoena on.

14 MR. HALEY: I'll pull it off the docket.

15 THE COURT: Let me know, I'll get someone from
16 Northern Trust on the phone if necessary.

17 MR. HALEY: Thank you.

18 MR. LA RUSSO: Your Honor, I know this doesn't
19 relate to Michael Peca but it will relate to the next
20 witness after, which is Kristin Peca, the wife. We were
21 provided with taped conversations between Mr. Kenner and
22 Mr. Peca, and I anticipate this becoming an issue. These
23 tapes were made I believe in 2012, well past the time of
24 the conspiracy. These conversations allude to
25 Mr. Kenner's belief that my client was responsible for the

1 misappropriation -- I don't have my notes with me, Judge,
2 as to exactly what the references are and where they
3 appear on the tape. But I know this was a bone of
4 contention earlier, on Monday, and I anticipate that if
5 the government uses it on their case or Mr. Haley intends
6 to use it on his, the question then comes down to whether
7 or not my application to preclude any reference to this
8 tape or any reference at least to Mr. Constantine, because
9 certainly they may be admissions as to Mr. Kenner, but
10 certainly would be a violation of Bruton I think under
11 these circumstances certainly wouldn't be admissible
12 against my client.

13 MS. KOMATIREDDY: Your Honor, we can solve this
14 problem. We've provided the defense with a list of
15 exhibits that contains four audio clips with respect to
16 Mr. Michael Peca, and four audio clips with respect to
17 Kristin Peca and also contains the company exhibits that
18 are transcripts of the audio clips, that are marked 505
19 one through four for Michael Peca, 506 one through four
20 for Kristin Peca, and we've been careful to redact and
21 remove any references that would be a violation of Bruton.
22 Counsel is free to review the clips. They're short. They
23 are collectively not more than five or 10 minutes. And I
24 think after the review I doubt we'll have a problem in the
25 morning.

1 THE COURT: I want to make sure Mr. Haley, you
2 made in comment in the opening.

3 MR. HALEY: Your Honor, as relates to the tape
4 recorded conversations between Kristin Peca and my client,
5 it is not my intention to introduce any of those
6 recordings into evidence by way of cross-examination of
7 this witness. I was referring specifically to an e-mail
8 in my opening statement that in my mind is an entirely
9 different issue.

10 So it's in the my intention to elicit that
11 information from the witness where my client accuses think
12 number of people, I believe that's inadmissible, Judge. I
13 wouldn't press that.

14 But there is an issue, Judge, I might say with
15 respect to the tape recorded conversations from Kristin
16 Peca, and the issue is this, Judge.

17 There are six hours of recorded conversations
18 involving Kristin Peca and my client. The government
19 takes excerpts of those recorded conversations and says we
20 want to listen to this part alone. The issue I confront,
21 Judge, and it's not my intention to prolong this trial,
22 you take a conversation, an excerpt of a conversation
23 where there's a total of six hours of conversation, focus
24 on that, it's taken out of context, Judge, and I indeed
25 suggest to the jury at times I know my position will be

1 with reference to those conversations, often times before
2 you get to that excerpt there's a lot that preceded that
3 excerpt that may be relevant and material with respect to
4 putting that excerpt in context of what had transpired.
5 Not only at the beginning of the conversation, but what
6 transpired in previous conversations.

7 I just alert the Court to that particular issue.
8 I don't want to play six hours of conversations. I
9 haven't formulated -- I just want your Honor to know that
10 when the government offers that recorded conversation into
11 evidence, we haven't reached stipulations as far as that's
12 concerned. We've reached stipulations as far as bank
13 records, documents, things of that nature.

14 THE COURT: The answer to your objection or
15 concern, if you believe there was some other portion of
16 the tape that provided additional context for the snippets
17 that the government was offering, the solution would be
18 you can offer those other snippets. But that obviously
19 would be subject to talking about snippets that don't
20 include where your client is pointing a finger at --

21 MR. HALEY: Correct. The snippets that I'm
22 referring to will presumably -- the snippets that I'm
23 referring to will presumably be offered by the government
24 by way of what sort of admission by my client. Is that
25 the government's theory?

1 THE COURT: I'm talking about your snippets. In
2 other words, the government is offering what they believe
3 are incriminating statements, admissions that your client
4 made.

5 MR. HALEY: Yes.

6 THE COURT: So if your intent is to stand up and
7 say I object, there's six hours and these are taken out of
8 context, my answer to the objection tomorrow would be if
9 there are other portions of the tape that you want to
10 play, that you believe provide context to that, I will
11 allow you to play those portions of it. If you don't want
12 to play six hours and you want to play an hour's worth and
13 have them available to the jury, I would be sensitive to
14 that. We have to be sensitive that they don't include
15 references to Mr. Constantine.

16 MR. HALEY: It's not my intention, your Honor,
17 to seek to introduce recorded conversations between
18 Kristin Peca and my client with respect to the activities
19 of Mr. Constantine.

20 THE COURT: Okay. I'm saying if there's other
21 portions that you want to offer, other than those
22 portions, because you believe they provide context to what
23 your client was saying.

24 MR. HALEY: Yes. I understand your Honor's
25 ruling, okay.

1 MS. KOMATIREDDY: Along those lines, your Honor,
2 given that the law provides a remedy in terms of the rule
3 of completeness, Mr. Haley should not be permitted to
4 cross-examine the witness on completeness grounds if he's
5 not actually going to offer or if he doesn't have a basis
6 for offering other portions under the rule of
7 completeness.

8 In other words, we do plan to introduce a
9 handful of clips. We believe those clips fairly and
10 accurately depict certain admissions and are part of
11 lengthy conversations and we don't believe that the
12 defense should be permitted to cross-examine the witness
13 as to the fairness of that particular cut if they don't
14 have a ground under the rule of completeness to do so.

15 THE COURT: He can establish how much taping
16 that she did.

17 MR. HALEY: Yes.

18 THE COURT: He can establish given six hours of
19 recordings, but so I don't know if I followed what are
20 you -- what do you not want him to do, not question the
21 witness on the scope of what the recordings were? What
22 about the topics were discussed? I'm not concerned about
23 what's the prejudice to the government by him doing that.

24 MS. KOMATIREDDY: Your Honor, the prejudice is
25 that the defense's argument has been from opening

1 statements that Special Agent Galioto is part of a
2 conspiracy to misconstrue or misrepresent the evidence in
3 this case, and in terms of properly cut clips that are cut
4 in part because of constitutional concerns such as Bruton,
5 because the government's obligation and a desire to abide
6 by the rules, that should not be used against us as a
7 basis for saying that it has not been misleading or acting
8 improperly.

9 MR. HALEY: Your Honor, I think we're talking
10 past each other. Your Honor's comment a moment ago was
11 precisely along the line of inquiry that I was going to
12 make to that particular witness, I might as well do it now
13 as opposed to sidebar. I do intend on asking Kristin Peca
14 as to how many conversations she had with Phil Kenner, how
15 many were recorded, how many hours of conversations she
16 made surreptitiously with Phil Kenner. I do intend to
17 question her on that and I think that's relevant and
18 material.

19 THE COURT: Yes. I think that's admissible.
20 Again, if he goes beyond that, starts suggesting that
21 there's another portion of the tape, just question the
22 witness suggesting there's another portion of the tape so
23 that that is not taken out of context. That would concern
24 me though if he was trying to question the witness on
25 that, but establishing the length, the lawyer is free to

1 get up before the jury and say that she recorded him for
2 six hours and the only quote/unquote admissions that the
3 government has with respect to these transactions is the
4 one they chose to may for you.

5 I think that's fair argument, to say that that
6 was the scope of what the government -- as this relates to
7 Mr. Constantine, it's not hurting the government by not
8 having access to that as it relates to Mr. Kenner.

9 MS. KOMATIREDDY: Understood, Judge, we're just
10 concerned given the comments in opening statement in which
11 we've decided not to use and object to the introduction of
12 an e-mail because our obligations under Bruton again, and
13 to turn around and suggest that to the jury that we're not
14 presenting to the jury misleading, along those lines I
15 want to state for the record that I understand the
16 attorney on cross is permitted to solicit whole clips of
17 the recordings rather than going to show the snippets of
18 the recordings. I understand that. But your Honor has
19 already articulated --

20 THE COURT: I think we're talking past each
21 other. Mr. Haley understands, I think he understands what
22 the parameters are.

23 You keep mentioning government would be hampered
24 by that. Mr. Haley, I won't go through what you did
25 yesterday, but one thing that he did say which is accurate

1 is that if there's something that he needs to get in for
2 purposes of his client that's admissible, the fact that
3 Bruton is creating an issue for him to do it, that's then
4 a problem for the Court. What he said -- because it's
5 Bruton doesn't necessarily bind him. He has to represent
6 his client. If there's something admissible for his
7 client, the fact that it may or may not violate Bruton for
8 Mr. Constantine that's not his concern, and frankly that
9 would create issues for the case if that were. Then we
10 have to address that. This is not one of those situations
11 because there are other portions that are admissible for
12 Mr. Kenner, I think Mr. Haley is acknowledging he's not
13 trying no get in those portions because they're not
14 admissible. But if he believed that there's an admissible
15 piece of evidence that benefits his client, if it creates
16 a Bruton issue that's what we have to address at that
17 point.

18 That's the issue of joint trials. You conduct a
19 joint trial without a situation arising based upon what I
20 was hearing and so far so good. All right. Let's get
21 started 9:30 tomorrow morning. Have a good night.

22 MS. KOMATIREDDY: Thank you, Judge.

23 (Whereupon, court recessed for the day until
24 Wednesday, May 6, 2015 at 9:30 a.m.)
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